



**1998**

# ***Illinois Register***

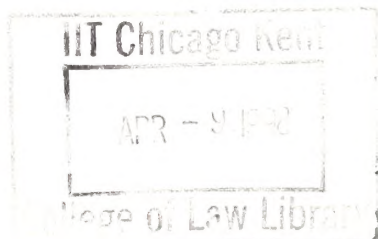
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**Rules of Governmental Agencies**

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April	17, 1998 - Issue 16: Through	March	31, 1998
July	17, 1998 - Issue 29: Through	June	30, 1998
October	16, 1998 - Issue 42: Through	September	30, 1998
January	15, 1999 - Issue 3: Through	December	31, 1998 (Annual)

## INTRODUCTION

The *Illinois Register* is the official state document for publishing public notice of rulemaking activity initiated by State governmental agencies. The table of contents is arranged categorically by rulemaking activity and alphabetically by agency within each category. The Register also contains a Cumulative Index listing alphabetically by agency the Parts (sets of rules) on which rulemaking activity has occurred in the current Register volume year and a Sections Affected Index listing by Title each Section (including supplementary material) of a Part on which rulemaking activity has occurred in the current volume year. Both indices are action coded and are designed to aid the public in monitoring rules.

Rulemaking activity consists of proposed or adopted new rules; amendments to or repealers of existing rules; and rules promulgated by emergency or peremptory action. Executive Orders and Proclamations issued by the Governor; notices of public information required by State statute; and activities (meeting agendas, Statements of Objection or Recommendation, etc.) of the Joint Committee on Administrative Rules (JCAR), a legislative oversight committee which monitors the rulemaking activities of State agencies; is also published in the Register.

The Register is a weekly update to the *Illinois Administrative Code* (a compilation of the rules adopted by State agencies). The most recent edition of the Code along with the Register comprise the most current accounting of State agencies' rules.

The Illinois Register is the property of the State of Illinois, granted by the authority of the Illinois Administrative Procedure Act [5 ILCS 100/1-1 et seq.].

## REGISTER PUBLICATION SCHEDULE 1998

Material Rec'd before Noon on:	Will be in Issue #:	Published on:	Material Rec'd before Noon on:	Will be in Issue #:	Published on:
Dec. 23, 1997	1	Jan. 2, 1998	June 30, 1998	28	July 10, 1998
Dec. 31, 1997	2	Jan. 9, 1998	July 7, 1998	29	July 17, 1998
Jan. 6, 1998	3	Jan. 16, 1998	July 14, 1998	30	July 24, 1998
Jan. 13, 1998	4	Jan. 23, 1998	July 21, 1998	31	July 31, 1998
Jan. 20, 1998	5	Jan. 30, 1998	July 28, 1998	32	Aug. 7, 1998
Jan. 27, 1998	6	Feb. 6, 1998	Aug. 4, 1998	33	Aug. 14, 1998
Feb. 3, 1998	7	Feb. 13, 1998	Aug. 11, 1998	34	Aug. 21, 1998
Feb. 10, 1998	8	Feb. 20, 1998	Aug. 18, 1998	35	Aug. 28, 1998
Feb. 17, 1998	9	Feb. 27, 1998	Aug. 25, 1998	36	Sept. 4, 1998
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May 5, 1998	20	May 15, 1998	Nov. 10, 1998	47	Nov. 20, 1998
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May 19, 1998	22	May 29, 1998	Nov. 24, 1998	49	Dec. 4, 1998
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June 16, 1998	26	June 26, 1998	Dec. 22, 1998	1	Jan. 4, 1999*
June 23, 1998	27	July 6, 1998*	Dec. 29, 1998	2	Jan. 8, 1999

**Please note:** When the Register deadline falls on a State holiday, the deadline becomes 4:30 p.m. on Monday (the day before).

\* Monday



## STATE BOARD OF EDUCATION

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Charter Schools
- 2) Code Citation: 23 Ill. Adm. Code 650
- 3) Section Numbers:  
650.30  
650.40  
650.60
- Proposed Action:  
Amendment  
Amendment
- 4) Statutory Authority: 105 ILCS 5/Art. 27A (see P.A. 90-548, effective January 1, 1998).
- 5) A Complete Description of the Subjects and Issues Involved: Enactment of P.A. 90-548 on December 4 has established a new role for the State Board of Education with regard to charter schools. The State Board has been authorized to consider appeals of local boards' denials and to determine whether a particular school should be chartered, based on whether it would be in the best interests of the students it is designed to serve. If the State Board determines that it wishes to override the local board's denial, it assumes the role of chartering entity and all the functions that would otherwise be performed by the local board, including providing funds to the school.

These changes require amendments to Part 650 of our rules, particularly so that the agency will be in a position to give appropriate consideration to the appeals it will receive. Specifically:

Section 650.30 is being amended to secure the resolution of denial adopted by a local board, thereby ensuring that the State Board will be informed as to the board's rationale for rejecting a proposal. This is based on our experience with supporting documentation in appeals received to date.

Section 650.40 is being changed to remove the limitation on the scope of the agency's review, as well as to provide the time that will be needed for in-depth consideration of a proposal's merits.

Section 650.60 also needs to conform to the broader role of the agency under the new law and provide explicitly for direct access to such additional information as may be needed. In addition, material is being added to afford the parties to an appeal the opportunity to make oral presentations, as well as to describe the process for the agency's eventual disposition of appeals.

- 6) Will this proposed rule replace an emergency rule currently in effect? Yes
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed amendment contain incorporations by reference? The

## STATE BOARD OF EDUCATION

## NOTICE OF PROPOSED AMENDMENTS

- rules do not contain an incorporation by reference under Section 5-75 of the Illinois Administrative Procedure Act.
- 9) Are there any other proposed amendments pending on this Part? No (Proposed amendments to these Sections were published on February 13, 1998, at 22 Ill. Reg. 3252, but those amendments will not be adopted by the State Board, in favor of promulgating the more comprehensive amendments that accompany this notice.)
- 10) Statement of Statewide Policy Objectives: This rulemaking will not create or enlarge a State mandate.
- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Written comments may be submitted within 45 days of the publication of this notice to:
- Sally Vogl  
Agency Rules Coordinator  
Illinois State Board of Education  
100 North First Street  
Springfield, IL 62777  
(217) 782-3950

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: Governing bodies of proposed charter schools.

B) Reporting, bookkeeping or other procedures required for compliance:  
None

C) Types of professional skills necessary for compliance: None

- 13) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because: The relevant legislation was enacted on December 4, 1997. The agency conducted emergency rulemaking to take effect January 1, 1998, along with the law. These amendments consist of follow-up to the emergency rulemaking.

The full text of the Proposed Amendments begins on the next page:

STATE BOARD OF EDUCATION  
NOTICE OF PROPOSED AMENDMENTS

- the local school board must be submitted to and certified by the State Board before it can have effect.
- b) Reports of denials, revocations or non-renewals shall consist of the charter proposal or current charter contract as voted upon by the local board(s) of education and a copy of each board's resolution setting forth the board's action and its reasons for the action. ~~any rationale cited by the board for its action (e.g., text of motion, text of minutes, written statement of the board, board letter of denial, and a record of the vote of the board) on the proposal.~~
  - c) A certification of publication and a copy of the printed notice of the public meeting for each local board of education involved, as required by Section 27A-8(d) of the School Code, must be submitted with all reports.
  - d) Reports shall be submitted via certified mail, return receipt requested, to:  
Illinois State Board of Education  
Charter Schools  
100 North First Street P.O. Box 6404  
Springfield, Illinois 62777 62708

No electronic or facsimile transmissions will be accepted.

e) Reports must be postmarked no later than 7 calendar days following the date of public meeting of the local board(s) of education at which the vote occurred and must include proof of service of the report upon the applicant or charter holder. In cases of separate public meetings by each school board involved, the 7 days shall begin when the last school board votes on the matter.

f) ~~Section 27A-4(b) of the School Code limits the number of charter schools and requires the State Board of Education to process applications in the order received in order to ensure fair and prompt consideration by the State Board of Education; applications for approved proposals addressed other than as specified in subsection (d) of this Section or postmarked later than 7 calendar days following the date of approval by all school boards involved shall not be processed.~~

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 650.40 Review of Local Approvals by State Board

a) Pursuant to Section 27A-6(d) of the School Code, the State Board shall assign a number to each submission or resubmission in chronological order of its receipt within each of the three geographic regions delineated in Section 27A-4 of the School Code. The State Board shall notify local boards of education when the maximum numbers of charter schools authorized for any region have been reached, and no further applications from such regions shall be processed until such time as the number of charter schools operating in a region falls below the maximum authorized. Notification shall be provided in a manner

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NOTICE OF PROPOSED AMENDMENTS

TITLE 23: EDUCATION AND CULTURAL RESOURCES  
SUBTITLE A: EDUCATION  
CHAPTER I: STATE BOARD OF EDUCATION  
SUBCHAPTER 0: MISCELLANEOUS

PART 650  
CHARTER SCHOOLS

Section	Definitions
650.10	Purpose
650.20	Submission to State Board of Education
650.30	Review of Local Approvals by State Board
650.40	Revision and Renewal of Charters
650.50	Appeal of Local School Board Decisions Reports
650.60	

AUTHORITY: Implementing and authorized by Article 27A of the School Code [105 ILCS 5/Art. 27A] (see P.A. 90-548, effective January 1, 1998).

SOURCE: Emergency rules adopted at 20 Ill. Reg. 6329, effective April 23, 1996, for a maximum of 150 days; emergency amendment at 20 Ill. Reg. 8677, effective June 25, 1996, for a maximum of 150 days; new Part adopted at 20 Ill. Reg. 15284, effective November 15, 1996; emergency amendment at 22 Ill. Reg. 1479, effective January 1, 1998, for a maximum of 150 days; emergency amendment at 22 Ill. Reg. 5104, effective February 27, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

Section 650.30 Submission to State Board of Education

Local board(s) of education shall report to the State Board of Education as to the action by the local board(s) of education with regard to an application for, revision of, renewal of, or revocation of a charter. A copy of the report shall be provided to the applicant or charter holder at the same time that the report is submitted to the State Board of Education. The report shall include a notice to the applicant or charter holder informing the applicant to the effect that a denial, revocation or non-renewal of a charter school application or revision may be appealed to the State Board of Education within 14 days after the postmark date that the report is submitted to the State Board of Education. Reports shall be submitted as follows:

- a) Reports of approved applications, revisions, or renewals shall be accompanied by a form to be supplied by the State Board. The form shall include a certification as to compliance with all of the procedural requirements and application components set forth in Article 27A of the School Code. The form and the proposed contractual agreement shall be signed by the president(s) of the local school board(s) and the appropriate officers of the charter school governing body. Section 27A-6 of the School Code provides that a proposed contract between the governing body of a proposed charter school and



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~~designed to reach each school district superintendent in the region.~~  
 b) The State Board shall review each report of an approved application, revision or renewal to determine whether the statutory requirements have been followed and the proposed contractual agreement is complete and compliant with the provisions of Article 27A of the School Code. Proposed contractual agreements which are complete and compliant with the provisions of Article 27A of the School Code shall be certified by the State Superintendent until the maximum authorized numbers of charter schools have been reached. A certification certified copy of the charter shall be sent to the local school board(s) and the charter school governing body. ~~No charter school may be authorized to open prior to the fall of 1996 (Section 27A-4(f) of the School Code).~~  
 b) If a report is incomplete or a proposed contractual agreement fails to comply with any applicable law, the State Board shall so notify the submitting school board(s) and the applicant or charter holder, identifying the area(s) of deficiency that must be remedied before the proposal can be considered for certification.

d) ~~The State Board shall review a report of a denied, revoked or non-renewed application or revision if an appeal is filed by the applicant. The review shall be limited to ascertaining compliance with the notice and hearing requirements of Article 27A and to determining that the rationale of the school board(s) does not contain any errors as to the applicable legal requirements.~~

c) The State Superintendent shall notify the local school board(s) and the applicant or charter holder as to a determination made with respect to a report of an approved application, renewal or revision by certified mail within 14 days after receipt of the report (Section 27A-8(f) of the School Code). ~~If an appeal of a denied, revoked or non-renewed application or revision is submitted pursuant to Section 650-60 of this Part, the State Superintendent shall notify the local school board(s) and the applicant by certified mail as to the determination made with respect to the review within 14 days after receipt of the appeal.~~

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 650.60 Appeal of Local School Board Decisions Reports

a) An applicant or a charter holder may appeal to the State Board of Education a local school board report which denies, revokes or refuses to renew a charter ~~an application only if the local school board(s) did not comply with the notice and hearing requirements of Article 27A of the School Code or if the local school board(s) made errors in applying the legal requirements of Article 27A, or both.~~ The appeal must state the reasons why the decision of the school board should be reversed and must be postmarked no later than 14 calendar days following the postmark date of the report's submission to the State

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Board of Education. The appeal must be submitted in writing by certified mail, return receipt requested, to the following address, with a copy sent by certified mail to the school board:

Illinois State Board of Education  
 Charter Schools  
 100 North First Street P-0--Box-6404  
 Springfield, Illinois 62777 62708

No electronic or facsimile transmissions will be accepted. Appeals ~~addressed other than as specified above or postmarked later than 14 calendar days following the postmark date of submission of the report~~ shall not be processed.

b) The parties shall submit to the State Board such additional information as the State Board determines is necessary to decide the appeal.

c) The applicant, charter holder, or school board may request an opportunity to make an oral presentation to staff of the State Board of Education designated by the State Superintendent of Education.

1) An applicant or charter holder shall request an oral presentation in the appeal document submitted pursuant to this Section.

2) If an applicant or charter holder does not request an oral presentation, the school board may request an oral presentation by mailing a written request to the State Board, with a copy sent to the applicant or charter holder, within seven days after the postmark date of the appeal.

3) Staff of the State Board of Education will schedule the presentation after giving no less than seven days' notice to each party, unless the State Superintendent can determine from the school board's report that the school or proposal, as a matter of law, does not comply with the Charter Schools Law.

4) If either party has requested and is entitled to an oral presentation, each party shall be given 45 minutes to make a presentation.

5) If neither party requests an oral presentation, staff of the State Board may request that the parties make an oral presentation after giving no less than seven days' notice to each party.

d) Staff of the State Board of Education shall submit a recommendation to the State Superintendent of Education.

1) If the State Superintendent determines that the appeal is untimely or that the school or proposal, as a matter of law, does not comply with the Charter Schools Law, he shall issue a final decision to the parties containing his findings and denying the appeal. Otherwise the State Superintendent shall submit his findings and recommendation to the State Board of Education for a final decision.

2) A copy of the final decision shall be sent by certified mail to each party within 60 days after receipt of the appeal, receipt of any additional information requested under subsection (b) of this

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Section, or the date of an oral presentation made pursuant to this Section, whichever occurs last.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF FINANCIAL INSTITUTIONS

## NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Credit Union Act
- 2) Code Citation: 38 Ill. Adm. Code 190
- 3) Section Number: 190.70  
Proposed Action: Amendment
- 4) Statutory Authority: 205 ILCS 305/8
- 5) A Complete Description of the Subjects and Issues Involved: Amends Loan Loss Accounting procedures and more completely defines terms.
- 6) Will this proposed rule replace any emergency rulemaking currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed rule (amendment, repealer) contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? No
- 10) Statement of Statewide Policy Objectives: The amendment neither creates nor expands a State mandate.
- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking:

M. Rose Kelly, Chief Counsel  
Dept. of Financial Institutions  
100 W. Randolph, Suite 15-700  
Chicago, IL 60601  
312-814-2008

12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, municipalities and not for profit corporations affected: Credit Unions
  - B) Reporting, bookkeeping or other procedures required for compliance:  
No additional requirements
  - D) Types of professional skills necessary for compliance: None
  - 13) Regulatory Agenda on which this rulemaking was summarized: January 1998
- The full text of the Proposed Amendment begins on the next page:



## DEPARTMENT OF FINANCIAL INSTITUTIONS

## NOTICE OF PROPOSED AMENDMENT

## TITLE 38: FINANCIAL INSTITUTIONS

## CHAPTER I: DEPARTMENT OF FINANCIAL INSTITUTIONS

## PART 190

## ILLINOIS CREDIT UNION ACT

Section	
190.5	Credit Union Service Organizations
190.10	Field of Membership Procedures
190.20	Hearings
190.30	Cease and Desist Procedures
190.40	Removal or Suspension Procedures
190.50	Fees
190.60	General Accounting Procedures
190.70	Loan Loss Accounting Procedures
190.80	Use of Electronic Data Processing
190.90	Property and Long Term Leases
190.100	Classes of Share and Special Purpose Share Accounts
190.110	Share Drafts
190.120	Bond and Insurance Requirements
190.130	Verification of Share and Loan Accounts
190.140	Real Estate Lending
190.150	Reverse Mortgage
190.160	Lending Limits - Other Than First Mortgage Loans
190.165	Business Loans
190.170	Group Purchasing
190.180	Investments
190.190	Liquidation
190.200	Conversion of Charter

AUTHORITY: Implementing and authorized by the Illinois Credit Union Act [205 ILCS 305].

SOURCE: Adopted at 4 Ill. Reg. 20, p. 17, effective May 7, 1980; amended at 6 Ill. Reg. 11154, effective September 7, 1982; amended and codified at 7 Ill. Reg. 14973, effective October 26, 1983; emergency amendment at 9 Ill. Reg. 14378, effective September 11, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 16231, effective October 10, 1985; amended at 10 Ill. Reg. 14667, effective August 27, 1986; amended at 12 Ill. Reg. 10464, effective June 7, 1988; amended at 12 Ill. Reg. 17383, effective October 24, 1988; amended at 13 Ill. Reg. 3793, effective March 10, 1989; amended at 13 Ill. Reg. 15998, effective October 2, 1989; emergency amendment at 16 Ill. Reg. 12781, effective July 29, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 17073, effective October 26, 1992; amended at 19 Ill. Reg. 2826, effective February 24, 1995; amended at 20 Ill. Reg. 5803, effective April 8, 1996; emergency amendment at 20 Ill. Reg. 13093, effective September 20, 1996, for a maximum of 150 days; emergency expired February 17, 1997; amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## DEPARTMENT OF FINANCIAL INSTITUTIONS

## NOTICE OF PROPOSED AMENDMENT

## Section 190.70 Loan Loss Accounting Procedures

a) For the purpose of absorbing and reporting loan losses, all credit unions must establish, at a minimum, the following accounts in the general ledger:

- 1) Allowance Reserve for Loan Losses - A portion of the statutory Regular Reserve segregated and reported as a direct reduction of loans.
- 2) Provision for Loan Losses - An expense account, immediately preceding dividend expense, used to reflect the cost of losses on loans. At a minimum, adjustments to the allowance for loan losses shall be made prior to the distribution or posting of any dividend to the accounts of members so that the valuation allowance for loan losses established fairly presents the value of loans and probable losses for all categories of loans. The allowance for loan losses must encompass:
  - A) specifically identified substandard doubtful or loss loans;
  - B) pools of classified loans;
  - C) pools of unclassified loans (consumer, credit card, mortgage, business, etc.); and
  - D) a general portion, as needed, for all other loans and credit instruments.

b) The Allowance Reserve for Loan Losses (ALL) (Rbbf) is initially established by a one-time transfer from the Regular Reserve (RR). The portion of the ALL adjustment that is attributable to the initial adoption of the Individual Classification method may be made through a one time entry to the undivided earnings account and shall only be permitted as a result of a statutory examination. Any subsequent replenishment of the ALL must be expensed using the Provision for Loan Losses (PLL) Account. ~~7-and-is-to-be-maintained-at-a-level-which-would enable-the-absorption-of-all-loans-which-this-rule-requires-the-credit union-to-charge-off-(this-does-not-include-loans-or-applicable-portion of-loan-balances-which-are-recoverable,-as-explained-hereafter)-and-an-amount-computed-using-the-past-six-calendar-years-experience-rate. Separate-Rbbfs-are-to-be-established-for-loans-secured-by-real-estate and-for-these-loans-not-so-secured. Except as provided herein no subsequent transfer from the Regular Reserve is permitted after the initial establishment of the Allowance Reserve for Loan Losses. The ALL shall be maintained at a level equivalent to an amount computed using both the past five calendar years average loss ratio and an individual classification of probable losses for all consumer and real estate loans. Pursuant to subsection (a)(2)(C), if a pool consists of a large group of smaller balance homogeneous loans, a credit union may utilize an estimated loss percentage on the pool to be determined by collectively evaluating the pool of loans for impairment, as permitted by generally accepted accounting principles (GAAP). The portion of the ALL attributable to the pool of loans may be determined by applying the estimated loss percentage to the total outstanding~~



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balance of the loans comprising the pool instead of individually classifying delinquent loans in the pool. An individual loan within a smaller balance homogeneous loan pool shall not exceed a credit union's unsecured lending limits set forth in Section 190.160. Separate ALL's shall be established for loans secured by real estate and for those loans not so secured.

- c) Delinquency is defined as the failure to make a required payment on or before the contractual due date. Loans delinquent more than 60 days, bankruptcy and loans that exhibit deficiencies that impair their full collectibility shall be classified as either substandard, doubtful or loss.

1) Substandard Loans - A substandard loan is one that is inadequately protected by the current sound worth and paying capacity of the obligee or of the collateral pledged. Loans classified as substandard have a well defined weakness or weaknesses that jeopardized the liquidation of the debt. They are characterized by the distinct possibility that the credit union will sustain some loss if the deficiencies are not corrected. Loans in this category shall generally be listed in a range from zero to under 50 percent potential loss.

2) Doubtful Loans - A loan classified doubtful has all the weaknesses inherent in a loan classified substandard, with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions and values, highly questionable and improbable. The possibility of loss is extremely high, but because of certain important and reasonable specific pending factors which may work to the advantage and strengthening of the loan, its classification as an estimated loss is deferred until a more exact status may be determined. Loans in this category shall be listed at a minimum 50 percent potential loss.

3) Loss Loans - Loans classified as loss loans are considered uncollectible and shall be listed at 100 percent potential loss. Loans considered loss loans include, but are not limited to:

- A) Any loan 180 days or more delinquent without a payment of at least 75% of the contractual payment within the last 90 days. Involuntary transfers from shares and proceeds from the sale of collateral and insurance settlement shall not be considered as payments.
- B) Any loan that is 180 days or more delinquent and referred to an attorney or a collection agency.
- C) Any loan which was previously 180 days or more delinquent, has been refinanced or extended and has subsequently become 90 days or more delinquent. In instances where a delinquent loan is refinanced or extended and does not fully and fairly disclose the delinquency as determined in a statutory examination of the credit union, the loan shall be immediately classified as a loss loan.

## DEPARTMENT OF FINANCIAL INSTITUTIONS

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- D) Any loan with respect to which the borrower has filed a Chapter 7 bankruptcy petition and has been granted a discharge by the court.

E) Any loan with respect to which the borrower has filed a Chapter 13 bankruptcy and the credit union has not received a payment within 180 days or more after the confirmation of the plan, unless the plan stipulates repayment of the loan in full and the credit union has determined from the Trustee that plan payments are being made on a timely basis to the Trustee but have not yet been disbursed to the credit union.

F) Any loan with respect to which the borrower's whereabouts is unknown (a "skip") unless there is a comaker whose whereabouts is known and the loan is less than 180 days delinquent.

G) Any loan where a "deficiency balance" has resulted from the sale of collateral or an insurance settlement unless there is documented evidence of periodic payments on a consistent basis in an amount sufficient to retire the deficiency balance in a reasonable time.

- 4) Where there is evidence of collectibility of loans meeting the loss loans criteria of subsection (c)(3) of this Section, the credit union's records shall list the loans and classify them as substandard or doubtful and detail the evidence of collectibility used to exclude each loan from the loss loan category. Evidence of collectibility shall be the following collection activities and remedies:

- A) Execution and filing of an enforceable reaffirmation agreement on the loan in a Chapter 7 bankruptcy proceeding prior to completion of the Department's loan analysis in any statutory examination of the credit union.
- B) Voluntary repayment of the loan pursuant to Section 524(f) of the Federal Bankruptcy Code.
- C) Collection of the loan pursuant to repossession of collateral without judicial process, or by replevin, detinue, forcible entry and detainer or mortgage foreclosure proceedings.
- D) Collection of the loan pursuant to post-judgment enforcement remedies including wage deduction, garnishment and turnover orders entered in citation to discover assets supplementary proceedings.
- E) The entry of a judgment pay plan order providing for repayment of the loan in a judicial proceeding.
- F) Documented evidence of repayment of that portion of the loan covered by collateral protection or other insurance policies.
- G) Documented evidence of periodic payments on a consistent basis in an amount sufficient to retire the loan balance in a reasonable time.



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objective evidence that the loan balance or a portion can be recovered and the credit union has taken appropriate action to effect recovery. The credit union's records must categorize all loans according to the above estimated loss criteria and contain evidence used to substantiate the continued carrying of a loan as an asset if the loan is in a loss category. The RBB must then be replenished using the Provision for Loan Losses Account (PBB) to the minimum required level based on the experience rate.

f) When making the year-end statutory Regular Reserve transfer, any amounts already taken as a PBB during the year may be deducted from the total transfer required to the extent of the transfer. If the PBB exceeds the statutory transfer amount equal to this excess may be transferred at the option of the credit union to the undivided earnings account from Regular Reserve if necessary, to pay the expenses of the period covered by the statutory transfer.

g) Nothing in this section shall be applicable to the establishment of a Reserve for Loan Losses account for business loans. Reference must be made to Section 190.165 of this Part for the establishment of a Reserve for Loan Losses account for business loans.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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5) The Five Year Average Loss Ratio is computed by dividing a sum not exceeding the total of the past five year's net loan losses by a sum not exceeding the total of the last five year's December 31 loan balances. The resulting ratio is to be multiplied by the total loans outstanding less the loans that have been classified individually or as pools of smaller balance homogeneous loans. Based upon the asset cycle of the credit union, the credit union, after receiving the written approval from the Director, may adjust the historical time period to more accurately reflect the credit union's loan loss experience. A new credit union not having a Five Year Average Loss Ratio for loss loans will be evaluated using available data.

A) Before every dividend declaration or every closing date, all delinquent and bankrupt loans shall be individually classified as either substandard, doubtful or loss. All loans classified as losses must be charged off to the ALL.

B) In calculating the proportion of net income that shall be transferred to the Regular Reserve, any amounts already taken as PLL during the calendar year shall be subtracted from the statutory reserve transfer. In the event the amount of PLL exceeds the statutory reserve transfer that has been calculated, an amount equivalent to the difference between the two shall be transferred from Regular Reserve to Undivided Earnings.

d) Nothing in this Section shall be applicable to the establishment of an Allowance for Loan Losses account for business loans. Business loans shall be classified pursuant to Section 190.165.

e) The experience rate which is used to determine the minimum required RBB is computed by dividing the total of the past six years' net loan losses by the total of the last six years' December 31 loan balances. In the case of a new credit union not having a 6-year experience rate for loss loans, an evaluation on the available data is used.

d) The following are the minimum criteria for determining a loss loan:

1) Any loan delinquent in contractual payments in an amount equal to 12 or more months;

2) Any loan on which the borrower has taken bankruptcy;

3) Any loan which was previously over 12 months delinquent, has been refinanced and has subsequently become delinquent in an amount equal to 3 monthly contractual payments or more; or

4) Any account placed in the hands of a collection agency or attorney where a percentage of the collected amount is retained by the collector or attorney as a fee for the collection service and which is delinquent or which subsequently becomes delinquent in contractual payments in an amount greater than 6 months.

e) Before every dividend declaration and/or every closing date, all loans in the above categories and any other loan on which there is an anticipated loss must be charged off to the RBB; however, such loans or applicable portions need not be charged off if there is substantial

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1) Heading of the Part: Schedules of Maximum rates to be charged for check cashing and writing of money orders by community and ambulatory currency exchanges.

2) Code Citation: 38 Ill. Adm. Code 130

3) Section Numbers: Proposed Action  
130.50 Amendment

4) Statutory Authority: 205 ILCS 405/19

5) A Complete Description of the Subjects and Issues Involved: The amendment clarifies the duty of the currency exchange to display its maximum fee for check cashing.

6) Will this proposed rule replace any emergency rulemaking currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed amendment contain incorporations by reference? No

9) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: This amendment neither expands or creates a State mandate.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking:

M. Rose Kelly, Chief Counsel  
Dept. of Financial Institutions  
100 W. Randolph, Suite 15-700  
Chicago, IL 60601  
312-814-2008

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, municipalities and not for profit corporations affected: Currency Exchanges

B) Reporting, bookkeeping or other procedures required for compliance:  
No additional requirements

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: January 1998

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The full text of the Proposed Amendment begins on the next page:



DEPARTMENT OF FINANCIAL INSTITUTIONS  
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TITLE 38: FINANCIAL INSTITUTIONS  
CHAPTER I: DEPARTMENT OF FINANCIAL INSTITUTIONS

PART 130

SCHEDULES OF MAXIMUM RATES TO BE CHARGED FOR CHECK CASHING  
AND WRITING OF MONEY ORDERS BY COMMUNITY AND AMBULATORY  
CURRENCY EXCHANGES

Section	Authority
130.10	Purposes
130.20	Maximum Rate - Check Cashing
130.30	Maximum Rate - Issuance of Money Orders
130.40	Disclosure Requirements - Check Cashing and Money Orders
130.50	Effective Date
130.60	

AUTHORITY: Implementing Sections 19.3 and 19.4 and authorized by Section 19 of the Currency Exchange Act [205 ILCS 405/19, 19.3 and 19.4].

SOURCE: Adopted at 2 Ill. Reg. 5, p. 1, effective January 27, 1978; amended at 4 Ill. Reg. 51, p. 104, effective January 1, 1981; emergency amendment at 5 Ill. Reg. 265, effective December 19, 1980, for a maximum of 150 days; emergency expired May 18, 1981; codified at 7 Ill. Reg. 11721; amended at 9 Ill. Reg. 1375, effective January 17, 1985; amended at 10 Ill. Reg. 11892, effective July 1, 1986; amended at 20 Ill. Reg. 13596, effective October 1, 1996; amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

Section 130.50 Disclosure Requirements - Check Cashing And Money Orders

- Charging by Means of Brackets ~~brackets~~ - Definition. Charging by means of brackets is a method of establishing fees for cashing checks or issuing money orders whereby a community or ambulatory currency exchange establishes a maximum ~~set~~ fee to be charged ~~uniformly~~ for cashing all checks or issuing all money orders within a certain range of stated face amounts.
- Checks - \$500-~~00~~ or Less ~~less~~. For all checks of the face amount of \$500-~~00~~ or less, each community and ambulatory currency exchange must post and display to the public its maximum ~~the~~ fees to be charged for cashing ~~said~~ checks by means of ~~brackets~~ as defined in subsection ~~Subsection~~ (a) above, provided that no fee charged within any bracket shall exceed the maximum rate ~~as~~ set forth in Section 130.30(a), and provided further, that all fees and brackets for all checks of the face amount of \$500-~~00~~ or less must be fully and completely stated without resort to language such as "repeat" or its equivalent.
- Checks in Excess of \$500-~~00~~. For all checks of face amounts in excess of \$500-~~00~~, community and ambulatory currency exchanges need not, but may, post and display to the public the maximum ~~the~~ fees to be charged by means of brackets as set forth in subsections (a) and (b) above.

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Community and ambulatory currency exchanges shall ~~they-must~~ post and display to the public a statement setting forth the rate of fees to be charged for cashing checks in excess of ~~their~~ posted and displayed bracketed fees, and such posting and display must be done without resort to language such as "repeat" or its equivalent. In no event shall the rate or fee to be charged exceed the maximum rate for cashing checks as set forth in Section 130.30(a).

- Money Orders - \$500-~~00-00~~ or Less. For all money orders of the face amount of \$500.00 or less, each community and ambulatory currency exchange must post and display to the public its maximum ~~the~~ fees to be charged to issue ~~said~~ money orders by means of brackets as defined in subsection (a) above, provided that no fee charged within any bracket shall exceed the maximum rate ~~as~~ set forth in Section 130.40(a), and provided further that all fees and brackets for all money orders of the face amount of \$500-~~00~~ or less must be fully and completely stated without resort to language such as "repeat" or its equivalent.
- Money Orders in ~~in~~ Excess of \$500-~~00-00~~. For all money orders of face amounts in excess of \$500-~~00~~, community and ambulatory currency exchanges need not, but may, post and display to the public its maximum ~~the~~ fees to be charged by means of brackets as set forth in subsections (a) and (d) above. Community and ambulatory currency exchanges shall ~~they-must~~ post and display to the public a statement setting forth the rate or fees to be charged for issuing money orders in excess of their posted and displayed bracketed fees, and such posting and display must be done without resort to language such as "repeat" or its equivalent. In no event shall the rate or fee to be charged exceed the maximum rate for issuing money orders ~~as~~ set forth in Section 130.40(a). Nothing in this Section ~~Rate~~ shall be construed to modify, amend or abrogate any rule or regulation of the Department of Financial Institutions relating to the issuance of money orders.
- Posting Requirements. The public posting and display ~~as~~ required by Section 130.50(b), (c) and (e) must be complete, detailed and unambiguous in lettering and numerals of no less than one-half inch in height. ~~The and-such~~ posting or display must be in a conspicuous place on the premises of the community currency exchange or in the location being served by the ambulatory currency exchange so ~~such~~ that the posting or display is unobstructed and is clearly and easily visible and legible to the customers of the community or ambulatory currency exchange.
- Filing of Fees with Director. Within ~~thirty--t~~ 30 days ~~after~~ of filing, each community and ambulatory currency exchange must file with the Director of the Department of Financial Institutions a full, complete and accurate statement of all charges and fees for rendering all services authorized by the Currency Exchange Act [205 ILCS 405], ~~of--the--State-of-Illinois~~ including, but not limited to, all fees and charges for cashing checks and issuing money orders. Within ~~thirty--t~~ 30 days ~~after~~ of the effective date of either any increase or

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decrease in any fees or charges for rendering any service authorized by the Currency Exchange Act of the State of Illinois, including, but not limited to, fees and charges for cashing checks and issuing money orders, community and ambulatory currency exchanges must file with the Director a full, complete and accurate statement of all such increases or decreases.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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- 1) Heading of the Part: Temporary Assistance for Needy Families
- 2) Code Citation: 89 Ill. Adm. Code 112
- 3) Section Numbers: Proposed Action:  
112.68 Amendment  
112.79 Amendment
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]
- 5) A Complete Description of the Subjects and Issues involved: These proposed amendments provide changes in the sanction process for the Temporary Assistance to Needy Families (TANF) program. Clients are subject to sanction for failure to cooperate, without good cause, in any of three areas:
  1. school attendance initiative,
  2. employment and training programs, and
  3. child support enforcement.

The sanction process is progressive in nature with each of the three levels carrying a greater penalty than the previous level. If a client is sanctioned once, a second sanction results in a more severe penalty and a third sanction results in yet a more severe penalty than a second sanction.

Currently, if a sanction is taken under one area (e.g., child support enforcement), a subsequent sanction under a different area (e.g., employment programs) does not result in a second level or more severe sanction. Instead, it results in a first level sanction in the employment area. This is a complicated process and fails to send the message to clients that cooperation in all programs is required and cooperation in all areas is interrelated.

Under this proposed rulemaking, the three program areas will be treated as a single track for sanction purposes. After a sanction is taken under one of the three tracks, any subsequent sanction that occurs under any of the tracks will be at the next level of sanction. Therefore, failure to cooperate in one area a second time or failure to cooperate in one of the other two areas a first time will result in a second level (a more severe sanction) and so on through the three sanction levels.

As a result of these proposed amendments, a sanction under the School Attendance Initiative (89 Ill. Adm. Code 112.68), employment and training programs and the Responsibility and Services Plan (89 Ill. Adm. Code 112.79), and Child Support Enforcement (89 Ill. Adm. Code 160.30) will be considered along one track. After a sanction is taken under one Section,



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a subsequent sanction under that Section or either of the other two Sections will be at the next level of sanction.

Companion amendments are being proposed by the Department of Public Aid to 89 Ill. Adm. Code 160 to implement this change.

- 6) Will this proposed rule replace an emergency rule currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this proposed rule contain incorporations by reference? No
- 9) Are there any other amendments pending on this Part? Yes

Section Numbers	Proposed Action	Illinois Register Citation
112.78	Amendment	22 Ill. Reg. 4354
112.78	Emergency	22 Ill. Reg. 4466

- 10) Statement of Statewide Policy Objectives (if applicable): This rulemaking is not applicable to units of local government.

- 11) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may present their comments concerning these rules within 45 days after this issue of the *Illinois Register*. All requests and comments should be submitted in writing to:

Mrs. Susan Warner Weir, Bureau Chief

Bureau of Administrative Rules and Procedures

Department of Human Services

100 South Grand Avenue East

3rd Floor, Harris Bldg.

Springfield, IL 62762

(217) 785-9772

TTY: (217) 557-1547

If because of physical disability you are unable to put comments into writing, you may make them orally to the person listed above.

- 12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary form compliance: None

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- 13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the two most recent agendas because: It was not anticipated by the Department when the two most recent regulatory agendas were published.

The full text of the Proposed Amendments begins on the next page:

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TITLE 89: SOCIAL SERVICES  
CHAPTER IV: DEPARTMENT OF HUMAN SERVICES  
SUBCHAPTER a: GENERAL PROGRAM PROVISIONS

## PART 112

## TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

## SUBPART A: GENERAL PROVISIONS

## Section

112.1 Description of the Assistance Program  
112.5 Incorporation by Reference

## SUBPART B: NON-FINANCIAL FACTORS OF ELIGIBILITY

## Section

112.8 Caretaker Relative  
112.9 Client Cooperation  
112.10 Citizenship  
112.20 Residence  
112.30 Age  
112.40 Relationship  
112.50 Living Arrangement  
112.52 Social Security Numbers  
112.54 Assignment of Medical Support Rights  
112.60 Basis of Eligibility  
112.61 Death of a Parent (Repealed)  
112.62 Incapacity of a Parent (Repealed)  
112.63 Continued Absence of a Parent (Repealed)  
112.64 Unemployment of the Parent (Repealed)  
112.65 Responsibility and Services Plan  
112.66 Alcohol and Substance Abuse Treatment  
112.67 Restriction in Payment to Households Headed by a Minor Parent  
112.68 School Attendance Initiative  
112.69 Felons and Violators of Parole or Probation

## SUBPART C: TANF EMPLOYMENT AND WORK ACTIVITY REQUIREMENTS

## Section

112.70 Employment and Work Activity Requirements  
112.71 Individuals Exempt from TANF Employment and Work Activity Requirements  
112.72 Participation/Cooperation Requirements  
112.73 Adolescent Parent Program (Repealed)  
112.74 Responsibility and Services Plan  
112.75 Teen Parent Personal Responsibility Plan (Repealed)  
112.76 TANF Orientation  
112.77 Reconciliation and Fair Hearings

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## TANF Employment and Work Activities

112.78 Sanctions  
112.79 Good Cause for Failure to Comply with TANF Participation Requirements  
112.80 Responsible Relative Eligibility for JOBS (Repealed)  
112.81 Supportive Services  
112.82 Teen Parent Services  
112.83 Work Experience Evaluation Project (Repealed)  
112.84 Four Year College/Vocational Training Demonstration Project  
112.85 (Repealed)

## SUBPART E: PROJECT ADVANCE

## Section

112.86 Project Advance (Repealed)  
112.87 Project Advance Experimental and Control Groups (Repealed)  
112.88 Project Advance Participation Requirements of Experimental Group Members and Adjudicated Fathers (Repealed)  
112.89 Project Advance Cooperation Requirements of Experimental Group Members and Adjudicated Fathers (Repealed)  
112.90 Project Advance Sanctions (Repealed)  
112.91 Good Cause for Failure to Comply with Project Advance (Repealed)  
112.93 Individuals Exempt From Project Advance (Repealed)  
112.95 Project Advance Supportive Services (Repealed)

## SUBPART F: EXCHANGE PROGRAM

## Section

112.98 Exchange Program (Repealed)

## SUBPART G: FINANCIAL FACTORS OF ELIGIBILITY

## Section

112.100 Unearned Income  
112.101 Unearned Income of Stepparent or Parent  
112.105 Budgeting Unearned Income  
112.106 Budgeting Unearned Income of Applicants Employed On Date of Application And/Or Date Of Decision  
112.107 Initial Receipt of Unearned Income  
112.108 Termination of Unearned Income  
112.110 Exempt Unearned Income  
112.115 Education Benefits  
112.120 Incentive Allowances  
112.125 Unearned Income In-Kind  
112.126 Earmarked Income  
112.127 Lump-Sum Payments  
112.128 Protected Income (Repealed)  
112.130 Earned Income  
112.131 Earned Income Tax Credit



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112.132 Budgeting Earned Income  
112.133 Budgeting Earned Income of Employed Applicants  
112.134 Initial Employment  
112.135 Budgeting Earned Income For Contractual Employees  
112.136 Budgeting Earned Income For Non-Contractual School Employees  
112.137 Termination of Employment  
112.138 Transitional Payments (Repealed)  
112.139 Exempt Earned Income  
112.140 Earned Income Exemption  
112.141 Exclusion From Earned Income Exemption  
112.142 Recognized Employment Expenses  
112.143 Income from Work-Study and Training Programs  
112.144 Earned Income From Self-Employment  
112.145 Earned Income From Roomer and Boarder  
112.146 Income From Rental Property  
112.147 Payments from the Illinois Department of Children and Family Services  
112.148 Earned Income In-Kind  
112.149 Assets  
112.150 Exempt Assets  
112.151 Asset Disregards  
112.152 Deferral of Consideration of Assets  
112.153 Property Transfers (Repealed)  
112.154 Income Limit  
112.155

SUBPART H: PAYMENT AMOUNTS

Section  
112.250 Grant Levels  
112.251 Payment Levels  
112.252 Payment Levels in Group I Counties  
112.253 Payment Levels in Group II Counties  
112.254 Payment Levels in Group III Counties  
112.255 Limitation on Amount of TANF Assistance to Recipients from Other States

SUBPART I: OTHER PROVISIONS

Section  
112.300 Persons Who May Be Included in the Assistance Unit  
112.301 Presumptive Eligibility  
112.302 Reporting Requirements for Clients with Earnings  
112.303 Retrospective Budgeting  
112.304 Budgeting Schedule  
112.305 Strikers  
112.306 Foster Care Program  
112.307 Responsibility of Sponsors of Non-Citizens Entering the County Prior to 8/22/96  
112.308 Responsibility of Sponsors of Non-Citizens Entering the Country on or

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After 8/22/96  
112.309 Institutional Status  
112.315 Young Parent Program (Renumbered)  
112.320 Redetermination of Eligibility  
112.330 Extension of Medical Assistance Due to Increased Income from Employment  
112.331 Four Month Extension of Medical Assistance Due to Child Support Collections  
112.332 Extension of Medical Assistance Due to Loss of Earned Income Disregard (Repealed)  
112.340 New Start Payments to Individuals Released from Department of Corrections Facilities (Repealed)

SUBPART J: CHILD CARE

Section  
112.350 Child Care (Repealed)  
112.352 Child Care Eligibility (Repealed)  
112.354 Qualified Provider (Repealed)  
112.356 Notification of Available Services (Repealed)  
112.358 Participant Rights and Responsibilities (Repealed)  
112.362 Additional Service to Secure or Maintain Child Care Arrangements (Repealed)  
112.364 Rates of Payment for Child Care (Repealed)  
112.366 Method of Providing Child Care (Repealed)  
112.370 Non-JOBS Education and Training Program (Repealed)

SUBPART K: TRANSITIONAL CHILD CARE

Section  
112.400 Transitional Child Care Eligibility (Repealed)  
112.404 Duration of Eligibility for Transitional Child Care (Repealed)  
112.406 Loss of Eligibility for Transitional Child Care (Repealed)  
112.408 Qualified Child Care Providers (Repealed)  
112.410 Notification of Available Services (Repealed)  
112.412 Participant Rights and Responsibilities (Repealed)  
112.414 Child Care Overpayments and Recoveries (Repealed)  
112.416 Fees for Service for Transitional Child Care (Repealed)  
112.418 Rates of Payment for Transitional Child Care (Repealed)

AUTHORITY: Implementing Article IV and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Art. IV and 12-13].

SOURCE: Filed effective December 30, 1977; peremptory amendment at 2 Ill. Reg. 17, p. 117, effective February 1, 1978; amended at 2 Ill. Reg. 31, p. 134, effective August 5, 1978; emergency amendment at 2 Ill. Reg. 37, p. 4, effective August 30, 1978, for a maximum of 150 days; peremptory amendment at 2 Ill. Reg. 46, p. 44, effective November 1, 1978; peremptory amendment at 2 Ill.

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Reg. 46, p. 56, effective November 1, 1978; emergency amendment at 3 Ill. Reg. 16, p. 41, effective April 9, 1979, for a maximum of 150 days; emergency amendment at 3 Ill. Reg. 28, p. 182, effective July 1, 1979, for a maximum of 150 days; amended at 3 Ill. Reg. 33, p. 399, effective August 18, 1979; amendment at 3 Ill. Reg. 33, p. 415, effective August 18, 1979; amended at 3 Ill. Reg. 38, p. 243, effective September 21, 1979; peremptory amendment at 3 Ill. Reg. 38, p. 321, effective September 7, 1979; amended at 3 Ill. Reg. 40, p. 140, effective October 6, 1979; amended at 3 Ill. Reg. 46, p. 36, effective November 2, 1979; amended at 3 Ill. Reg. 47, p. 96, effective November 13, 1979; amended at 3 Ill. Reg. 48, p. 1, effective November 15, 1979; peremptory amendment at 4 Ill. Reg. 9, p. 259, effective February 22, 1980; amended at 4 Ill. Reg. 10, p. 258, effective February 25, 1980; amended at 4 Ill. Reg. 12, p. 551, effective March 10, 1980; amended at 4 Ill. Reg. 27, p. 387, effective June 24, 1980; emergency amendment at 4 Ill. Reg. 29, p. 294, effective July 8, 1980, for a maximum of 150 days; amended at 4 Ill. Reg. 37, p. 797, effective September 2, 1980; amended at 4 Ill. Reg. 37, p. 800, effective September 2, 1980; amended at 4 Ill. Reg. 45, p. 134, effective October 27, 1980; amended at 5 Ill. Reg. 766, effective January 2, 1981; amended at 5 Ill. Reg. 1134, effective January 26, 1981; peremptory amendment at 5 Ill. Reg. 5722, effective June 1, 1981; amended at 5 Ill. Reg. 7071, effective June 23, 1981; amended at 5 Ill. Reg. 7104, effective June 23, 1981; amended at 5 Ill. Reg. 8041, effective July 27, 1981; amended at 5 Ill. Reg. 8052, effective July 24, 1981; peremptory amendment at 5 Ill. Reg. 8106, effective August 1, 1981; peremptory amendment at 5 Ill. Reg. 10062, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10079, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10095, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10113, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10124, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10131, effective October 1, 1981; amended at 5 Ill. Reg. 10730, effective October 1, 1981; amended at 5 Ill. Reg. 10733, effective October 1, 1981; amended at 5 Ill. Reg. 10760, effective October 1, 1981; amended at 5 Ill. Reg. 10767, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 11647, effective October 16, 1981; peremptory amendment at 6 Ill. Reg. 611, effective January 1, 1982; amended at 6 Ill. Reg. 1216, effective January 14, 1982; emergency amendment at 6 Ill. Reg. 2447, effective March 1, 1982, for a maximum of 150 days; peremptory amendment at 6 Ill. Reg. 2452, effective February 11, 1982; peremptory amendment at 6 Ill. Reg. 6475, effective May 18, 1982; peremptory amendment at 6 Ill. Reg. 6912, effective May 20, 1982; emergency amendment at 6 Ill. Reg. 7299, effective June 2, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 8115, effective July 1, 1982; amended at 6 Ill. Reg. 8142, effective July 1, 1982; amended at 6 Ill. Reg. 8159, effective July 1, 1982; amended at 6 Ill. Reg. 10970, effective August 26, 1982; amended at 6 Ill. Reg. 11921, effective September 21, 1982; amended at 6 Ill. Reg. 12293, effective October 1, 1982; amended at 6 Ill. Reg. 12318, effective October 1, 1982; amended at 6 Ill. Reg. 13754, effective November 1, 1982; rules repealed, new rules adopted and codified at 7 Ill. Reg. 907, effective January 11, 1983; rules repealed and new rules adopted and codified at 7 Ill. Reg. 2720, effective February 28, 1983; amended (by adding Sections being codified with no substantive change) at

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7 Ill. Reg. 5195; amended at 7 Ill. Reg. 11284, effective August 26, 1983; amended at 7 Ill. Reg. 13920, effective October 7, 1983; amended at 7 Ill. Reg. 15690, effective November 9, 1983; amended (by adding Sections being codified with no substantive change) at 7 Ill. Reg. 16105; amended at 7 Ill. Reg. 17344, effective December 21, 1983; amended at 8 Ill. Reg. 213, effective December 27, 1983; emergency amendment at 8 Ill. Reg. 569, effective January 1, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 4176, effective March 19, 1984; amended at 8 Ill. Reg. 5207, effective April 9, 1984; amended at 8 Ill. Reg. 7226, effective May 16, 1984; amended at 8 Ill. Reg. 11391, effective June 27, 1984; amended at 8 Ill. Reg. 12333, effective June 29, 1984; amended (by adding Sections being codified with no substantive change) at 8 Ill. Reg. 17894; peremptory amendment at 8 Ill. Reg. 18127, effective October 1, 1984; peremptory amendment at 8 Ill. Reg. 19889, effective October 1, 1984; amended at 8 Ill. Reg. 19983, effective October 3, 1984; emergency amendment at 8 Ill. Reg. 21666, effective October 19, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 21621, effective October 23, 1984; amended at 8 Ill. Reg. 25023, effective December 19, 1984; amended at 9 Ill. Reg. 282, effective January 1, 1985; amended at 9 Ill. Reg. 4062, effective March 15, 1985; amended at 9 Ill. Reg. 8155, effective May 17, 1985; emergency amendment at 9 Ill. Reg. 10094, effective June 19, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 11317, effective July 5, 1985; amended at 9 Ill. Reg. 12795, effective August 9, 1985; amended at 9 Ill. Reg. 15887, effective October 4, 1985; amended at 9 Ill. Reg. 16277, effective October 11, 1985; amended at 9 Ill. Reg. 17827, effective November 18, 1985; emergency amendment at 10 Ill. Reg. 354, effective January 1, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 1172, effective January 10, 1986; amended at 10 Ill. Reg. 3641, effective January 30, 1986; amended at 10 Ill. Reg. 4885, effective March 7, 1986; amended at 10 Ill. Reg. 8118, effective May 1, 1986; amended at 10 Ill. Reg. 10628, effective June 1, 1986; amended at 10 Ill. Reg. 11017, effective June 6, 1986; Sections 112.78 through 112.86 and 112.88 recodified to 89 Ill. Adm. Code 160 at 10 Ill. Reg. 11928; emergency amendment at 10 Ill. Reg. 12107, effective July 1, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 12650, effective July 14, 1986; Reg. 15101, effective September 5, 1986; amended at 10 Ill. Reg. 15621, effective September 19, 1986; amended at 10 Ill. Reg. 21860, effective December 12, 1986; amended at 11 Ill. Reg. 2280, effective January 16, 1987; amended at 11 Ill. Reg. 3140, effective January 30, 1987; amended at 11 Ill. Reg. 4682, effective March 6, 1987; amended at 11 Ill. Reg. 5223, effective March 11, 1987; amended at 11 Ill. Reg. 6228, effective March 20, 1987; amended at 11 Ill. Reg. 9927, effective May 15, 1987; amended at 11 Ill. Reg. 12432, effective November 1, 1987; emergency amendment at 11 Ill. Reg. 12935, effective July 10, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 12908, effective July 30, 1987; emergency amendment at 11 Ill. Reg. 12935, effective August 1, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 13625, effective August 1, 1987; amended at 11 Ill. Reg. 14755, effective August 26, 1987; amended at 11 Ill. Reg. 18679, effective November 1, 1987; emergency amendment at 11 Ill. Reg. 18781, effective November 1, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 20114, effective December 4, 1987;



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Sections 112.90 and 112.95 recodified to Sections 112.52 and 112.54 at 11 Ill. Reg. 20610; amended at 11 Ill. Reg. 20889, effective December 14, 1987; amended at 12 Ill. Reg. 844, effective January 1, 1988; emergency amendment at 12 Ill. Reg. 1929, effective January 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 2126, effective January 12, 1988; SUBPARTS C, D and E recodified to 111. Reg. 2126, effective January 12, 1988; SUBPARTS G, H and I at 12 Ill. Reg. 2136; amended at 12 Ill. Reg. 3487, effective January 22, 1988; amended at 12 Ill. Reg. 6159, effective March 18, 1988; amended at 12 Ill. Reg. 6694, effective March 22, 1988; amended at 12 Ill. Reg. 7336, effective May 1, 1988; amended at 12 Ill. Reg. 7673, effective April 20, 1988; amended at 12 Ill. Reg. 9032, effective May 20, 1988; amended at 12 Ill. Reg. 10481, effective June 13, 1988; amended at 12 Ill. Reg. 14172, effective August 30, 1988; amended at 12 Ill. Reg. 14669, effective September 16, 1988; amended at 13 Ill. Reg. 70, effective January 1, 1989; amended at 13 Ill. Reg. 6017, effective April 14, 1989; amended at 13 Ill. Reg. 8567, effective May 22, 1989; amended at 13 Ill. Reg. 16006, effective October 6, 1989; emergency amendment at 13 Ill. Reg. 16142, effective October 2, 1989, for a maximum of 150 days; emergency expired March 1, 1990; amended at 14 Ill. Reg. 705, effective January 1, 1990; amended at 14 Ill. Reg. 3170, effective February 13, 1990; amended at 14 Ill. Reg. 3575, effective February 23, 1990; amended at 14 Ill. Reg. 6306, effective April 16, 1990; amended at 14 Ill. Reg. 10379, effective June 20, 1990; amended at 14 Ill. Reg. 13652, effective August 10, 1990; amended at 14 Ill. Reg. 14140, effective August 17, 1990; amended at 14 Ill. Reg. 16937, effective September 30, 1990; emergency amendment at 15 Ill. Reg. 338, effective January 1, 1991, for a maximum of 150 days; emergency amendment at 15 Ill. Reg. 2862, effective February 4, 1991, for a maximum of 150 days; emergency expired July 4, 1991; amended at 15 Ill. Reg. 5275, effective April 1, 1991; amended at 15 Ill. Reg. 5684, effective April 10, 1991; amended at 15 Ill. Reg. 11127, effective July 19, 1991; amended at 15 Ill. Reg. 11447, effective July 25, 1991; amended at 15 Ill. Reg. 14227, effective September 30, 1991; amended at 15 Ill. Reg. 17308, effective November 18, 1991; amended at 16 Ill. Reg. 9972, effective June 15, 1992; amended at 16 Ill. Reg. 11550, effective July 15, 1992; emergency amendment at 16 Ill. Reg. 11652, effective July 1, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 13629, effective September 1, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 17724, effective November 9, 1992; amended at 16 Ill. Reg. 20147, effective December 14, 1992; amended at 17 Ill. Reg. 357, effective December 24, 1992; amended at 17 Ill. Reg. 813, effective January 15, 1993; amended at 17 Ill. Reg. 2253, effective February 15, 1993; amended at 17 Ill. Reg. 4312, effective March 25, 1993; emergency amendment at 17 Ill. Reg. 6325, effective April 9, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 6792, effective April 21, 1993; amended at 17 Ill. Reg. 15017, effective September 3, 1993; amended at 17 Ill. Reg. 19156, effective October 25, 1993; emergency amendment at 17 Ill. Reg. 19696, effective November 1, 1993, for a maximum of 150 days; amended at 18 Ill. Reg. 5909, effective March 31, 1994; amended at 18 Ill. Reg. 6994, effective April 27, 1994; amended at 18 Ill. Reg. 8703, effective June 1, 1994; amended at 18 Ill. Reg. 10774, effective June 27, 1994; amended at 18 Ill. Reg. 12805, effective August 5, 1994; amended at 18 Ill. Reg. 15774, effective October 17, 1994; expedited correction at 19 Ill.

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Reg. 998, effective October 17, 1994; amended at 19 Ill. Reg. 2845, effective February 24, 1995; amended at 19 Ill. Reg. 5609, effective March 31, 1995; amended at 19 Ill. Reg. 7883, effective June 5, 1995; emergency amendment at 19 Ill. Reg. 10206, effective July 1, 1995, for a maximum of 150 days; emergency amendment at 19 Ill. Reg. 12011, effective August 7, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 12664, effective September 1, 1995; emergency amendment at 19 Ill. Reg. 15244, effective November 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 15661, effective November 3, 1995; emergency amendment at 19 Ill. Reg. 15839, effective November 15, 1995, for a maximum of 150 days; emergency amendment at 19 Ill. Reg. 16295, effective December 1, 1995, for a maximum of 150 days; amended at 20 Ill. Reg. 845, effective January 1, 1996; amended at 20 Ill. Reg. 3538, effective February 15, 1996; amended at 20 Ill. Reg. 5648, effective March 30, 1996; amended at 20 Ill. Reg. 6018, effective April 12, 1996; amended at 20 Ill. Reg. 6498, effective April 29, 1996; amended at 20 Ill. Reg. 7892, effective June 1, 1996; emergency amendment at 20 Ill. Reg. 12499, effective September 1, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 14820, effective November 1, 1996; amended at 20 Ill. Reg. 15983, effective December 9, 1996; emergency amendment at 21 Ill. Reg. 662, effective January 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 940, effective January 7, 1997; amended at 21 Ill. Reg. 1366, effective January 15, 1997; amended at 21 Ill. Reg. 2655, effective February 7, 1997; amended at 21 Ill. Reg. 7391, effective May 31, 1997; emergency amendment at 21 Ill. Reg. 8426, effective July 1, 1997, for a maximum of 150 days; recodified from the Department of Public Aid to the Department of Human Services at 21 Ill. Reg. 9322; amended at 21 Ill. Reg. 15597, effective November 26, 1997; emergency amendment at 22 Ill. Reg. 4466, effective February 24, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART B: NON-FINANCIAL FACTORS OF ELIGIBILITY

## Section 112.68 School Attendance Initiative

- a) Identification and Referral
  - 1) Participating elementary schools will identify children in grades one through eight who receive TANF and who are not attending school regularly, as defined by the school. If the schools cannot address the families' problems that appear to be resulting in irregular school attendance, they will refer the families to participating social service networks. The family will be notified, in writing, of the referral and the consequences for non-cooperation with the referral.
  - 2) Social service networks should be specifically equipped to address the causes of truancy, at no cost to the family other than the normal co-payment under existing programs.
  - 3) Upon referral, a Social Service Network Representative will assess the specific family situation and will develop a service plan with the family that will include getting the child to

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- regularly attend school.
- 4) The service plan for the truant child in grades seven and eight is completed by the social service agency, school, juvenile justice system or other agency. The plan includes options such as community service, mandatory after school tutoring/mentoring programs, and working with juvenile advocates. It may also include suspension from extracurricular activities. Contact with law enforcement may also be involved.

## b) Use of Protective Payee

- 1) Upon failure of the family to cooperate with the referral, or with the service plan, as determined by the social service provider, the family will be placed under a Protective Payee with the Social Service Network Representative acting as the payee for the family's TANF grant. The provisions of 89 Ill. Adm. Code 117.10 shall otherwise apply.
- 2) The protective payee will remain in effect until the family follows through with the service plan, as determined by the social service provider. The protective payee may be discontinued during the months of June, July and August at the option of the service provider.

## c) Cash Assistance Sanctions

- 1) If a protective payee plan, as provided in subsection (b) of this Section, has been in effect for at least three months and the child continues to regularly miss school, as defined by the school, the cash assistance payment will be reduced by 50 percent of the family's payment level until the attendance is satisfactory. If attendance is not satisfactory after three months of reduced payments, the entire cash payment will be stopped.
- 2) For a second instance, the cash assistance payment will be reduced by 50 percent of the family's payment level for three months. If attendance is not satisfactory after three months of reduced payments, the entire cash payment will be stopped.
- 3) For a third instance and any subsequent instance, the family's entire cash assistance payment will be stopped for at least three months. Cash assistance will be reinstated for the fourth month if the requirement is met during the three-month sanction period.
- 4) Sanction penalties accumulate by family, not by person, during any single period of continuous assistance. A single period of continuous assistance is not interrupted by a loss of all cash assistance due to a sanction. If a family member's non-cooperation occurs during a sanction period which was the result of another member's non-cooperation, the next progressive sanction shall apply.
- 5) Reconciliation must be attempted before imposing a sanction under this Section.
- 6) Sanctions will not be applied during the months of June, July and August, except in the case of year-round schools.

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- 2) Sanctions under this Section, employment and training programs and the Responsibility and Services plan (89 Ill. Adm. Code 112.79), and Child Support Enforcement (89 Ill. Adm. Code 160.30) shall be considered along one track. After a sanction is taken under one Section, a subsequent sanction under that Section or either of the other two Sections will be at the next level of sanction, as set out above.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART C: TANF EMPLOYMENT AND WORK ACTIVITY REQUIREMENTS

## Section 112.79 Sanctions

- a) Sanctions may be imposed against those participants who fail to participate without good cause. Sanctions shall be based on instances of non-cooperation which occur on or after July 1, 1997. The sanction penalty shall be as follows:

- 1) For the first instance of non-cooperation, the cash assistance payment is reduced by 50 percent of the family's payment level until the cooperation requirement is met. If the cooperation requirement is not met after three months of reduced payments, the entire cash payment is stopped.
  - 2) For the second instance of non-cooperation, the cash assistance payment is reduced by 50 percent of the family's payment level for three months. If the cooperation requirement is not met after three months of reduced payments, the entire cash payment is stopped.
  - 3) For the third instance and any subsequent instance of non-cooperation, the family's entire cash assistance payment is stopped for at least three months. Cash assistance will be reinstated for the fourth month if the cooperation requirement is met during the three-month sanction period.
  - 4) Sanction penalties accumulate by family, not by person, during any single period of continuous assistance. A loss of all cash assistance due to sanction shall not be considered a break in assistance. If a family member's non-cooperation occurs during a sanction period which was the result of another member's non-cooperation, the next progressive sanction shall apply.
- b) Sanction Reasons
- Sanctioning of a participant will result from one instance of any of the following unless reconciliation is successful:
- 1) failure to respond to a job referral;
  - 2) failure to accept a bona fide offer of suitable employment (see Section 112.72(a)(3) and (4));
  - 3) discontinuing part-time employment (less than 20 hours per week);
  - 4) reducing employment (that is, hours of employment) to less than



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- 20 hours per week;
- 5) failure to respond to a call-in notice for an Orientation appointment (see Section 112.76). This reason only applies to nonexempt clients who are mandated to participate;
- 6) failure to report to an assessment interview and comply with the assessment process (see Section 112.74). This reason only applies to nonexempt clients who are mandated to participate;
- 7) failure to participate in the activity;
- 8) failure to respond to a written notice for a meeting. For the purpose of determining attendance at meetings, if participant arrives anytime within 30 minutes after the start of the scheduled meeting, the participant will be considered present and will be seen. If the participant has good cause (see Section 112.80) for being more than 30 minutes late the tardiness will be excused. The worker will include the participant in a scheduled group or other meeting or re-schedule the participant for another meeting;
- 9) failure to make good faith effort to complete and provide verification of the required number of acceptable employer contacts every 30 days when employer contact activity is required;
- 10) failure to accept transportation, family counseling or other social service or employment and training services such as testing or employment counseling, thereby precluding or interrupting participation in work or training activities;
- 11) failure to maintain satisfactory participation of at least 75% in below post-secondary and post-secondary education activities; or
- 12) failure to provide verification of education/training activities, employability status, etc.
- c) No sanction will be imposed until staff has sent the participant a written notice scheduling a good cause determination/ reconciliation meeting to determine whether the participant had good cause for his or her failure to comply with requirements and the participant has either failed to attend the meeting or failed to show good cause. If the participant failed to show good cause, the reconciliation process will continue (see Section 112.77) to enable resolving disputes related to participation. The written notice shall explain the purpose of the appointment and the consequences for failure to attend or failure to show good cause. Failure of the participant to appear for the scheduled meeting is not considered an instance of noncooperation.
- d) A sanction against participants may be rescinded at any level of the sanction process up through and until the final agency decision, including any appeal hearing, if the participant establishes good cause (see Section 112.80 for good cause criteria).
- e) The notice of change form issued for a sanction shall include the following:
- 1) a description of the acts of noncooperation, including dates where applicable;

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- 2) a statement that the participant's acts were without good cause (see Section 112.80 for good cause criteria); and
- 3) the following language will be required for participants: You will be sanctioned until (last day of sanction period). In order for cash assistance to be restored at the end of the sanction period with no further gap in assistance, you must file an application (or written request) for cash assistance between (x date) and (y date). If you apply later than (y date), there may be a further gap in assistance.
- f) At least 14 days prior to the end of the sanction period, a notice will be sent to sanctioned individuals whose failure to cooperate has continued for three months explaining the individual's option to end the sanction.
- g) A sanction under this Section shall not affect receipt of Medical Assistance. ~~Otherwise, a sanction for child support enforcement or the school attendance initiative does not affect any instances of non-cooperation under this Section.~~
- h) Individuals who are sanctioned will be contacted at least one time per month to attempt to re-engage the client back into the program. Supportive services (see Section 112.82) will be paid while in sanction status if the individual is participating. If the family is also sanctioned for failure to cooperate with child support enforcement or school attendance initiative requirements, the sanctions are served simultaneously.
- i) A person must cooperate to end the sanction. When the person cooperates, benefits are restored as of the date of cooperation or, for second or third instances of sanction, at the end of the three month period, whichever is later.
- j) Sanctions under this Section, Child Support Enforcement (89 Ill. Adm. Code 160.30), and the School Attendance Initiative (89 Ill. Adm. Code 112.68(c)) shall be considered along one track. After sanction is taken under one Section, a subsequent sanction under that Section or either of the other two Sections will be at the next level of sanction, as set out in Section 112.79(a) of this Section.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF NUCLEAR SAFETY

## NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Licensing of Radioactive Material

2) Code Citation: 32 Ill. Adm. Code 330

3) Section Number: Proposed Action:  
330.40 Amendment

4) Statutory Authority: Implementing and authorized by the Radiation Protection Act of 1990 [420 ILCS 40].

5) A Complete Description of the Subjects and Issues Involved: As stated in its emergency rulemaking, the Department is proposing this amendment to grant the "in-vivo" diagnostic use of capsules containing one microcurie of carbon-14 urea to physicians who are exempt from the requirements of a license. The Department believes it is of medical importance to grant this exemption because access to this new diagnostic tool is expected to result in the cost effective treatment and cure of most patients suffering from peptic ulcers. Section 330.40 is being amended by adding an Agency Note and a cross reference to the NRC rule at 10 CFR 32.21.

The Department has received a request from the Council on Radionuclides and Radiopharmaceuticals, Inc. (CORAR) urging all the Agreement States to immediately take appropriate regulatory action to accommodate the use of the new diagnostic drug by persons exempt from licensing. The Department is therefore amending 32 Ill. Adm. Code 330 to include this exemption.

6) Will this proposed amendment replace an emergency rule currently in effect? Yes

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed amendment contain incorporations by reference? Yes

9) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: The requirements imposed by the proposed rulemaking are not expected to require local governments to establish, expand, or modify their activities in such a way as to necessitate additional expenditures from local revenues.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments on this proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice. Comments should be submitted to:

Robert B. Holtsclaw  
Staff Attorney  
Department of Nuclear Safety

## DEPARTMENT OF NUCLEAR SAFETY

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1035 Outer Park Drive  
Springfield, Illinois 62704  
(217) 524-1003 (voice)  
(217) 782-6133 (TDD)

The Department will consider fully all written comments on this proposed rulemaking submitted during the 45 day comment period.

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities or not for profit corporations affected: The Department does not believe that these amendments will impact small businesses, small municipalities or not for profit corporations.

B) Reporting, bookkeeping or other procedures required for compliance: These amendments do not require any additional reporting, bookkeeping or other procedures to be in compliance with this rulemaking.

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: This amendment was not included in either of the 2 most recent regulatory agendas because: This amendment was not anticipated by the Department when the two most recent regulatory agendas were published.

The full text of the Proposed Amendment is identical to the text of the emergency amendment published in this issue of the Illinois Register on page 6242.



## DEPARTMENT OF PROFESSIONAL REGULATION

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1) Heading of the Part: Physician Assistant Practice Act

2) Code Citation: 68 Ill. Adm. Code 1350

3) Section Numbers: Proposed Action:

1350.20 Amendment

1350.40 Amendment

1350.80 Amendment

1350.85 New Section

1350.116 Amendment

1350.117 Amendment

4) Statutory Authority: Physician Assistant Practice Act [225 ILCS 95]

5) A Complete Description of the Subjects and Issues Involved: Public Act 90-0061, effective December 30, 1997, includes the reauthorization of the Physician Assistant Practice Act. Among its changes were increasing the number of physician assistants that may be supervised by a physician and the delegation of limited prescriptive authority to physician assistants. This proposed rulemaking establishes guidelines for the delegation of such authority.

6) Will these proposed amendments replace emergency rules currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? No

9) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives (if applicable): This rulemaking has no impact on local governments.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Interested persons may submit written comments to:

Department of Professional Regulation

Attention: Jean A. Courtney

320 West Washington, 3rd Floor

Springfield, IL 62786

217/785-0813; Fax: 217/782-7645

All written comments received within 45 days of this issue of *Illinois Register* will be considered.

12) Initial Regulatory Flexibility Analysis:

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A) Types of small businesses, small municipalities and not for profit corporations affected: Those providing physician assistant services.

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: Physician assistant skills are required for licensure.

13) Regulatory Agenda on which this rulemaking was summarized: July 1997

The full text of the Proposed Amendments begins on the next page:

## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF PROPOSED AMENDMENTS

TITLE 68: PROFESSIONS AND OCCUPATIONS  
CHAPTER VII: DEPARTMENT OF PROFESSIONAL REGULATION  
SUBCHAPTER b: PROFESSIONS AND OCCUPATIONS

PART 1350  
PHYSICIAN ASSISTANT PRACTICE ACT  
OF 1987

Section	Statutory Authority (Repealed)
1350.10	Definitions
1350.20	Fees
1350.25	Approved Programs
1350.30	Application for Licensure
1350.40	Temporary Certificate
1350.50	Identification
1350.60	Permitted Tasks (Repealed)
1350.70	Supervision of Performance
1350.80	Delegation of Prescriptive Authority Pursuant to Section 7.5 of the Act
1350.85	
1350.90	Scope and Function
1350.100	Notification of Employment
1350.110	Employment by a Professional Corporation or Partnership
1350.115	Renewals
1350.116	Restoration
1350.117	Endorsement
1350.120	Granting Variances

**AUTHORITY:** Implementing Section 9 of the Physician Assistant Practice Act of 1987 [225 ILCS 95/9] and authorized by Section 60(7) of the Civil Administrative Code of Illinois [20 ILCS 2105/60(7)].

**SOURCE:** Adopted at 4 Ill. Reg. 34, p. 200, effective August 13, 1980; codified at 5 Ill. Reg. 11051; amended at 5 Ill. Reg. 14171, effective December 3, 1981; emergency amendment at 6 Ill. Reg. 916, effective January 6, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 7448, effective June 15, 1982; amended at 8 Ill. Reg. 3027, effective February 29, 1984; transferred from Chapter I, 68 Ill. Adm. Code 350 (Department of Registration and Education) to Chapter VII, 68 Ill. Adm. Code 1350 (Department of Professional Regulation) pursuant to P.A. 85-225, effective January 1, 1988, at 12 Ill. Reg. 2960; amended at 18 Ill. Reg. 18046, effective December 12, 1994; amended at 22 Ill. Reg. 3891, effective February 5, 1998; amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 1350.20 Definitions**

"Act" means the Physician Assistant Practice Act of 1987 [225 ILCS 95].

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"Advisory Committee" means the Physician Assistant Advisory Committee to the Medical Licensing Board.

"Alternate Supervising Physician" means a physician designated by the supervising physician in accordance with Section 4(8) of the Act. The alternate supervising physician shall maintain all the same responsibilities as the supervising physician. *Nothing in this part shall be construed as to limit the reasonable number of alternate supervising physicians provided they are designated by the supervising physician.* (Section 4 of the Act [225 ILCS 95/4])

"Department" means the Department of Professional Regulation of the State of Illinois.

"Disciplinary Board" means the Medical Disciplinary Board established pursuant to Section 7 of the Medical Practice Act [225 ILCS 60].

"Licensing Board" means the Medical Licensing Board established pursuant to Section 8 of the Medical Practice Act.

"Physician Assistant" means a person licensed by the Department and who practices in accordance with the provisions set forth in the Physician Assistant Practice Act of 1987. A physician assistant is only authorized to practice within the current scope of practice of the supervising physician/alternate supervising physician and is further limited by his/her education, training and experience.

"Supervising Physician" means a physician licensed to practice medicine in all of its branches under the Medical Practice Act and who is the primary supervising physician of the physician assistant in accordance with Section 4(7) of the Act. *No more than two physician assistants shall be supervised by the supervising physician, although a physician assistant shall be able to hold more than one professional position.* (Section 7 of the Act)

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

**Section 1350.40 Application for Licensure**

a) An applicant for licensure as a physician assistant shall file an application on forms provided by the Department. The application shall include:

- 1) Certification of graduation from an approved program that meets the requirements set forth in Section 1350.30 of this part or certification from the National Commission on Certification of Physician Assistants, or its successor agency, that the applicant has substantially equivalent training and experience;



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- 2) Certification of successful completion of the Physician Assistant National Certifying Examination. The certification shall be forwarded to the Department from the National Commission on Certification of Physician Assistants, or its successor agency;
- 3). A complete work history since graduation from a physician assistant program;
- 4) Certification, on forms provided by the Department, from all states in which an applicant was licensed and is currently licensed, if applicable, stating:
- A) The time during which the applicant was licensed in that state, including the date of the original issuance of the license;
- B) Whether the file on the applicant contains any record of disciplinary actions taken or pending;
- 5) The fee required in Section 1350.25 of this Part ~~19411~~ **--of--the Act.**
- b) A physician assistant license will be issued when the applicant meets the requirements set forth above. However, a physician assistant may not practice until a notice of employment has been filed in accordance with Section 1350.100 of this Part.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1350.80 Supervision of Performance

- a) The supervising physician/alternate supervising physician shall maintain the final responsibility for the care of the patient and the performance of the physician assistant.
- b) Delegated procedures and tasks performed by the physician assistant shall be within the current scope of practice of the supervising physician or designated alternate supervising physician with whom the physician assistant is working at the time.
- c) The supervising physician may ~~shall~~ supervise no more than two ~~ent~~ **one** physician assistants ~~assistant~~. However, a physician assistant shall be able to hold more than one professional position.
- d) Any time the supervising physician is unable to provide the appropriate supervision to the physician assistant, he/she shall designate an alternate supervising physician to provide such supervision. The name(s) of the alternate supervising physician(s) shall be identified in the guidelines established by the supervising physician. If the supervising physician will be unable to supervise the physician assistant for more than 30 days, he/she shall notify the Department, on forms prescribed by the Department. Failure of the supervising physician to notify the Department shall be grounds for discipline of the physician's license.
- e) When under supervision of an alternate supervising physician, the physician assistant may carry out those duties that are contained

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- within the established guidelines of the physician/physician assistant team. An alternate supervising physician shall be subject to the same supervision responsibilities as the supervising physician.
- f) It is the responsibility of the supervising physician to direct and review the work, records and practice of the physician assistant on a timely basis to ensure that appropriate directions are given and understood and that appropriate treatment is being rendered.
- g) In the event that the supervising physician is not present in the same facility as the physician assistant, the supervising physician should be within reasonable travel distance from the facility so that the supervising physician can personally assure the proper care of his/her patients.
- h) The supervising physician shall have full authority and responsibility to direct, supervise and limit the role of a physician assistant. Nothing contained herein shall be deemed to alter the fact that a physician assistant shall continue to bear responsibility for his/her actions to the extent that the physician assistant fails to comply with physician directives or is not carrying out those directives in a professional and appropriate manner in conformance with his/her training.
- i) The physician assistant shall only work under the direction of the current supervising physician or alternate supervising physician and may undertake patient care responsibilities only for the patients of the supervising physician or alternate supervising physician.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1350.85 Delegation of Prescriptive Authority Pursuant to Section 7.5 of the Act

- a) The supervising physician or alternate supervising physician may delegate limited prescriptive authority to a physician assistant pursuant to Section 7.5 of the Act and this Section.
- 1) Limited prescriptive authority may include noncontrolled substances and Schedule III, IV, or V controlled substances.
- 2) To prescribe Schedule III, IV, or V controlled substances, the physician assistant shall affix the supervising physician's Drug Enforcement Administration (DEA) number to, and individually sign, the appropriate prescription form containing the printed names of the physician assistant and supervising physician. The physician assistant does not need a DEA number.
- 3) The supervising physician or alternate supervising physician shall maintain the final responsibility for the care of the patient and the performance of the physician assistant.
- b) Written guidelines, in addition to any other requirements set forth in this Part, shall be established by the supervising physician and the physician assistant that include any delegated ability of the

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physician assistant to prescribe within the scope of practice of the physician and in addition to noncontrolled substance prescriptions whether the physician assistant has the ability to prescribe Schedule III, IV, or V controlled substances.

- c) A supervising physician or alternate supervising physician may not delegate the authority to prescribe Schedule I and II controlled substances.

- d) The written guidelines shall include the name of the alternate supervising physician(s) and the prescriptive authority for the supervising physician when under the direction of the alternate supervising physician. When prescribing Schedule III, IV, or V controlled substances under the direction of the alternate supervising physician, the physician assistant shall affix the alternate supervising physician's DEA number to, and individually sign, the appropriate prescription form containing the printed names of the physician assistant and alternate supervising physician.

- e) Delegated procedures, tasks performed and prescriptions written by the physician assistant shall be within the current scope of practice of the supervising physician or designated alternate supervising physician with whom the physician assistant is working at the time.

- f) The supervising physician and any alternate supervising physicians shall file with the Department a notice of delegation of prescriptive authority to a physician assistant which includes the authority delegated (general prescriptive and/or Schedule III, IV, or V). A termination of such authority shall also be filed with the Department. Failure of the supervising physician or alternate supervising physician to notify the Department shall be grounds for discipline of the physician's license.

- g) It is the responsibility of the supervising physician to direct and review the work, records, prescriptions written and practice of the physician assistant on a timely basis to ensure that appropriate directions are given and understood and that appropriate treatment is being rendered.

- h) The physician assistant shall only work and prescribe under the direction of the current supervising physician or alternate supervising physician and may undertake patient care responsibilities and have prescriptive authority only for the patients of the supervising physician or alternate supervising physician.

(Source: Added at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1350.116 Restoration

- a) A person seeking restoration of a license that has expired for 3 years or less ~~than three~~ years shall have the license restored upon payment of all lapsed renewal fees required by Section 1350.25 of this Part 10-of-the-Act.

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- b) A person seeking restoration of a license that has been placed on inactive status for 3 years or less ~~than three~~ years shall have the license restored upon payment of the current renewal fee.

- c) A person seeking restoration of a license after it has expired or been placed on inactive status for more than three 3 years ~~or more~~ shall file an application, on forms supplied by the Department, including the applicant's work history since the license expired and the fee required by Section 1350.25 of this Part 10-of-the-Act. The person shall also submit either:

- 1) Sworn evidence of active practice in another jurisdiction. Such evidence shall include a statement from the appropriate board or licensing authority in the other jurisdiction that the registrant was authorized to practice during the term of said active practice; or

- 2) An affidavit attesting to military service as provided in Section 15 of the Act; or

- 3) Successful completion of the examination administered by and proof of current certification from the National Commission on the Certification of Physician Assistants or its successor agency.

- d) When the accuracy of any submitted documentation or the relevance or sufficiency of the course work or experience is questioned by the Department because of a lack of information, discrepancies or conflicts in information given or a need for clarification, the applicant seeking restoration of a license shall be requested to:

- 1) Provide such information as may be necessary; and/or
- 2) Appear for an interview before the Advisory Committee to explain such relevance or sufficiency, clarify information or clear up any discrepancies or conflict in information. Upon the recommendation of the Licensing Board and approval by the Director, an applicant shall have the license restored or will be notified in writing of the reason for the denial of the application.

- e) A physician assistant license will be issued when the applicant meets the requirements set forth above. However, a physician assistant may not practice until a notice of employment has been filed in accordance with Section 1350.100 of this Part.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1350.117 Endorsement

- a) An applicant for licensure as a physician assistant who is licensed under the laws of another state shall file an application with the Department which shall include:

- 1) A certification from all states in which the applicant was licensed and is currently licensed, stating:



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- A) The time during which the applicant was licensed in that jurisdiction; and
- B) Whether the file on the applicant contains any record of any disciplinary actions taken or pending;
- 2) A complete work history indicating all employment since graduation from a program that meets the requirements set forth in Section 1350.30;
- 3) Certification of successful completion of the Physician Assistant National Certifying Examination given by the National Commission on Certification of Physician Assistants, or its successor agency;
- 4) The required fee set forth in Section 1350.25 of this Part ~~10~~ 10 ~~11~~ 11 ~~12~~ 12 ~~13~~ 13 ~~14~~ 14 ~~15~~ 15 ~~16~~ 16 ~~17~~ 17 ~~18~~ 18 ~~19~~ 19 ~~20~~ 20 ~~21~~ 21 ~~22~~ 22 ~~23~~ 23 ~~24~~ 24 ~~25~~ 25 ~~26~~ 26 ~~27~~ 27 ~~28~~ 28 ~~29~~ 29 ~~30~~ 30 ~~31~~ 31 ~~32~~ 32 ~~33~~ 33 ~~34~~ 34 ~~35~~ 35 ~~36~~ 36 ~~37~~ 37 ~~38~~ 38 ~~39~~ 39 ~~40~~ 40 ~~41~~ 41 ~~42~~ 42 ~~43~~ 43 ~~44~~ 44 ~~45~~ 45 ~~46~~ 46 ~~47~~ 47 ~~48~~ 48 ~~49~~ 49 ~~50~~ 50 ~~51~~ 51 ~~52~~ 52 ~~53~~ 53 ~~54~~ 54 ~~55~~ 55 ~~56~~ 56 ~~57~~ 57 ~~58~~ 58 ~~59~~ 59 ~~60~~ 60 ~~61~~ 61 ~~62~~ 62 ~~63~~ 63 ~~64~~ 64 ~~65~~ 65 ~~66~~ 66 ~~67~~ 67 ~~68~~ 68 ~~69~~ 69 ~~70~~ 70 ~~71~~ 71 ~~72~~ 72 ~~73~~ 73 ~~74~~ 74 ~~75~~ 75 ~~76~~ 76 ~~77~~ 77 ~~78~~ 78 ~~79~~ 79 ~~80~~ 80 ~~81~~ 81 ~~82~~ 82 ~~83~~ 83 ~~84~~ 84 ~~85~~ 85 ~~86~~ 86 ~~87~~ 87 ~~88~~ 88 ~~89~~ 89 ~~90~~ 90 ~~91~~ 91 ~~92~~ 92 ~~93~~ 93 ~~94~~ 94 ~~95~~ 95 ~~96~~ 96 ~~97~~ 97 ~~98~~ 98 ~~99~~ 99 ~~100~~ 100 ~~101~~ 101 ~~102~~ 102 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- 9) Are there any other proposed amendments pending on this Part? No
- 10) Statement of Statewide Policy Objectives: These proposed amendments do not affect units of local government.
- 11) Time, Place, and Manner in which Interested Persons may comment on this proposed rulemaking: Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking. All comments must be in writing and should be addressed to:
- Joanne Jones  
Bureau of Rules and Regulations  
Illinois Department of Public Aid  
201 South Grand Ave. E., 3rd Floor  
Springfield, IL 62763  
217/524-3215

The Department requests the submission of written comments within 30 days after the publication of this notice. The Department will consider all written comments it receives during the first notice period as required by Section 5-40 of the Illinois Administrative Procedure Act [5 ILCS 100/5-40].

These proposed amendments may have an impact on small businesses, small municipalities, and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80 and 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as small businesses, small municipalities, or not-for-profit corporations as part of any written comments they submit to the Department.

12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: None
- B) Reporting, bookkeeping or other procedures required for compliance: None
- C) Types of professional skills necessary for compliance: None

- 13) Regulatory Agenda on which this rulemaking was summarized: The rule was not included on either of the 2 most recent agendas because: This rulemaking was not anticipated by the Department when the two most recent regulatory agendas were published.

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The full text of the Proposed Amendments begins on the next page.



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NOTICE OF PROPOSED AMENDMENTS  
TITLE 89: SOCIAL SERVICES  
CHAPTER I: DEPARTMENT OF PUBLIC AID  
SUBCHAPTER f: COLLECTIONS

PART 160  
CHILD SUPPORT ENFORCEMENT  
SUBPART A: GENERAL PROVISIONS

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160.1 Incorporation By Reference  
160.5 Definitions  
160.10 Child Support Enforcement Program  
160.12 Administrative Accountability Process  
160.15 Application Processing Fee for IV-D Non-TANF Cases  
160.20 Assignment of Rights to Support  
160.25 Recoupment

Section  
160.30 Cooperation With Support Enforcement Program  
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160.45 Suspension of Child Support Enforcement Upon Finding of Good Cause

SUBPART C: ESTABLISHMENT AND MODIFICATION OF  
CHILD SUPPORT ORDERS

Section  
160.60 Establishment of Support Obligations  
160.61 Uncontested and Contested Administrative Paternity and Support Establishment  
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SUBPART D: ENFORCEMENT OF CHILD SUPPORT ORDERS

Section  
160.70 Enforcement of Support Orders  
160.75 Withholding of Income to Secure Payment of Support  
160.77 Certifying Past-Due Support Information or Failure to Comply with a Subpoena or Warrant to State Licensing Agencies  
160.80 Amnesty - 20% Charge  
160.85 Diligent Efforts to Serve Process

SUBPART E: EARMARKING CHILD SUPPORT PAYMENTS

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Section  
160.90 Earmarking Child Support Payments

SUBPART F: DISTRIBUTION OF SUPPORT COLLECTIONS

Section  
160.100 Distribution of Child Support for TANF Recipients  
160.110 Distribution of Child Support for Former AFDC or TANF Recipients Who Continue to Receive Child Support Enforcement Services  
160.120 Distribution of Child Support Collected While the Client Was an AFDC or TANF Recipient, But Not Yet Distributed at the Time the AFDC or TANF Case Is Cancelled  
160.130 Distribution of Intercepted Income Tax Refunds and Other State Payments  
160.132 Distribution of Child Support for Non-TANF Clients  
160.134 Distribution of Child Support for Interstate Cases  
160.136 Distribution of Child Support Collected in IV-E Foster Care Maintenance Cases  
160.138 Distribution of Child Support for Medical Assistance No Grant Cases

SUBPART G: STATEMENT OF CHILD SUPPORT ACCOUNT ACTIVITY

Section  
160.140 Statement of Child Support Account Activity

SUBPART H: DEPARTMENT REVIEW OF DISTRIBUTION OF CHILD SUPPORT

Section  
160.150 Department Review of Distribution of Child Support for TANF Recipients  
160.160 Department Review of Distribution of Child Support for Former AFDC or TANF Recipients

AUTHORITY: Implementing and authorized by Sections 4-1.7, Art. X, 12-4.3 and 12-13 of the Illinois Public Aid Code [305 ILCS 5/4-1.7, Art. X, 12-4.3 and 12-13].

SOURCE: Recodified from 89 Ill. Adm. Code 112.78 through 112.86 and 112.88 at 10 Ill. Reg. 11928; amended at 10 Ill. Reg. 19990, effective November 14, 1986; emergency amendment at 11 Ill. Reg. 4800, effective March 5, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 9129, effective April 30, 1987; amended at 11 Ill. Reg. 15208, effective August 31, 1987; emergency amendment at 11 Ill. Reg. 1563, effective December 31, 1987, for a maximum of 150 days; amended at 12 Ill. Reg. 9065, effective May 16, 1988; amended at 12 Ill. Reg. 20835, 18185, effective November 4, 1988; emergency amendment at 12 Ill. Reg. 20835, effective December 2, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 22778, effective January 1, 1989; amended at 13 Ill. Reg. 4268, effective March 21, 1989; amended at 13 Ill. Reg. 7761, effective May 22, 1989; amended at 13

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Ill. Reg. 14385, effective September 1, 1989; amended at 13 Ill. Reg. 16768, effective October 12, 1989; amended at 14 Ill. Reg. 18759, effective November 9, 1990; amended at 15 Ill. Reg. 1034, effective January 21, 1991; amended at 16 Ill. Reg. 1852, effective January 20, 1992; amended at 16 Ill. Reg. 9997, effective June 15, 1992; amended at 17 Ill. Reg. 2272, effective February 11, 1993; amended at 17 Ill. Reg. 18844, effective October 18, 1993; amended at 18 Ill. Reg. 697, effective January 10, 1994; amended at 18 Ill. Reg. 12052, effective July 25, 1994; amended at 18 Ill. Reg. 15083, effective September 23, 1994; amended at 18 Ill. Reg. 17886, effective November 30, 1994; amended at 19 Ill. Reg. 1314, effective January 30, 1995; amended at 19 Ill. Reg. 8298, effective June 15, 1995; amended at 19 Ill. Reg. 12675, effective August 31, 1995; emergency amendment at 19 Ill. Reg. 15492, effective October 30, 1995, for a maximum of 150 days; amended at 20 Ill. Reg. 1195, effective January 5, 1996; amended at 20 Ill. Reg. 5659, effective March 28, 1996; emergency amendment at 20 Ill. Reg. 14002, effective October 15, 1996, for a maximum of 150 days; amended at 21 Ill. Reg. 1189, effective January 10, 1997; amended at 21 Ill. Reg. 3922, effective March 13, 1997; emergency amendment at 21 Ill. Reg. 8594, effective July 1, 1997, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 9220, effective July 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 12197, effective August 22, 1997; amended at 21 Ill. Reg. 16050, effective November 26, 1997; amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART B: COOPERATION WITH CHILD SUPPORT ENFORCEMENT

## Section 160.30 Cooperation With Support Enforcement Program

- a) As a condition of eligibility, unless the Department determines there is good cause for refusing, a caretaker relative (see 89 Ill. Adm. Code 101.20 for definition of "caretaker relative") must cooperate with the Department in:
- 1) identifying and locating the responsible relative of a child for whom aid is claimed;
  - 2) establishing the paternity of a child for whom aid is claimed;
  - 3) obtaining support from the responsible relative; and
  - 4) enforcing support obligations.
- b) If the caretaker relative and his or her spouse are in the home and are included in the assistance grant, both must comply with the cooperation requirements. A caretaker relative who fails or refuses, without good cause (see Sections 160.35 through 160.45), to cooperate in the enforcement of support obligations shall be ineligible for medical assistance for himself or herself. If a caretaker states, without good cause, a refusal to cooperate with child support enforcement requirements, the family is not eligible for cash benefits. A caretaker who fails to cooperate, without valid reason, is subject to the following provisions:
- 1) For the first instance of non-cooperation, the cash assistance payment will be reduced by 50 percent of the family's Payment

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- Level until the cooperation requirement is met. If the cooperation requirement is not met after three months of reduced payments, the entire cash payment will be stopped.
- 2) For the second instance of non-cooperation, the cash assistance payment will be reduced by 50 percent of the family's Payment Level for three months. If the cooperation requirement is not met after three months of reduced payments, the entire cash payment will be stopped.
  - 3) For the third (or more) instance of non-cooperation, the family's entire cash assistance payment will be stopped for at least three months. Cash assistance will be reinstated for the fourth month if the cooperation requirement is met during the three-month sanction period.
  - 4) Sanction penalties accumulate during any single period of continuous assistance. A loss of all cash assistance due to sanction shall not be considered a break in assistance. If a family member's non-cooperation occurs during a sanction period which was the result of another member's non-cooperation, the next progressive sanction penalty shall apply.
  - 5) No sanction will be imposed until staff have a reconciliation meeting to determine whether the client had valid reason for failing to comply with requirements and the client has either failed to attend the meeting or failed to show valid reason. If the client fails to show valid reason, the reconciliation process will continue to enable resolution of disputes. Failure of the client to appear for a scheduled meeting is not considered an instance of noncooperation.
  - 6) The Department shall establish a reconciliation procedure to assist in resolving disputes related to any aspect of cooperation. Through the reconciliation process, the Department will have a mechanism to identify good cause and valid reason, ensure that the client is aware of the issue and enable the client to perform the required activity without facing sanction.
- c) "Cooperation with the Department" in the context of subsection (a) of this Section means any of the following actions that are relevant to, or necessary for, the achievement of the objectives specified in subsection (a) of this Section:
- 1) appearing at such places as an office of the Department or the Department's legal representative (such as the Attorney General or his designee), as necessary, to provide verbal or written information, or documentary evidence, known to, possessed by, or reasonably obtainable by the caretaker relative;
  - 2) appearing and testifying as a witness at judicial or administrative proceedings;
  - 3) paying to the Department any child support payments received from the responsible relative; and
  - 4) providing information, or attesting to the lack of information, under penalty of perjury (for the penalty for perjury, see



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Section 32-2 of the Criminal Code [720 ILCS 5/32-2]). All caretaker relatives must sign a statement attesting that:

- A) he or she has, to the best of his or her ability, provided all information requested of him or her; and
  - B) all information which he or she has provided is true and correct, to the best of his or her knowledge.
- d) Grounds for a determination that a caretaker relative has failed or refused to cooperate with the requirements of subsection (c) of this Section are as follows:
- 1) failure or refusal, without a valid reason, to appear for an appointment or interview at such places as the Department's or the Department's legal representative's office;
  - 2) failure or refusal, without a valid reason, to appear and testify as a witness at a judicial or administrative proceeding;
  - 3) failure or refusal, without a valid reason, to submit to a court or administratively-ordered genetic test; or
  - 4) failure or refusal during an appointment or interview to attest under penalty of perjury that:
    - A) he or she has provided all verbal or written information or documentary evidence known to, possessed by or reasonably obtainable by him or her about the identity and location of the responsible relative; and
    - B) the information provided is true and correct, to the best of his or her knowledge.
  - 5) A caretaker relative may claim a valid reason for failure or refusal to appear for an appointment or interview, to appear and testify as a witness at a judicial or administrative proceeding or to submit to a court or administratively-ordered genetic test.
    - A) Examples of valid reasons for failure or refusal to cooperate include, but are not limited to:
      - i) illness;
      - ii) incapacity (for example, a broken leg, information of a scheduled surgery or recuperation from surgery);
      - iii) death in the family;
      - iv) non-Child Support Enforcement court-required appearance;
      - v) temporary incarceration;
      - vi) family crisis;
      - vii) breakdown in child care arrangements;
      - viii) sudden or unexpected emergency;
      - ix) unavailability of otherwise suitable child care;
      - x) breakdown in transportation arrangements or lack of reasonably available transportation; or
      - xi) non-receipt of notice of appointment or interview, court date or genetic test date.
    - B) The Department will not require a caretaker relative to provide proof of a valid reason for failure or refusal to cooperate unless:

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- i) the caretaker relative has failed or refused to appear for an appointment or interview, judicial or administrative proceeding or genetic test on at least one other occasion within a 30-day period from the first failure to appear; or
  - ii) evidence, independent of the explanation of valid reason, contradicts the caretaker relative's explanation.
- C) When the Department requests proof of a valid reason, the caretaker relative must provide such proof (for example, physician's statement, dated pharmacy statement, hospital admission statement, statements by witnesses) within ten calendar days after the request. The Department shall allow an additional ten calendar days to provide proof at the request of the caretaker relative. If the caretaker relative does not provide the proof, the Department shall reject the claim of a valid reason.
- D) The sanction for failure or refusal to appear for an appointment or interview, judicial or administrative proceeding or genetic test shall be rescinded at any level of the appeal process up through and until the final agency decision and any lost benefits will be restored, if the caretaker relative establishes a valid reason for his or her failure or refusal.
- e) If a caretaker relative, who is subject to the penalty at subsection (b) of this Section because of a failure or refusal to cooperate indicates that he or she is willing to cooperate within the three-month penalty period, he or she will be given the opportunity to cooperate. The caretaker relative will be determined to have cooperated if he or she complies with the requirements that he or she previously failed or refused to meet as follows:
- 1) In the case of a caretaker relative for whom a sanction was imposed for missing an interview or appointment, he or she may demonstrate cooperation by appearing at a new interview or appointment. If the caretaker relative notifies the Department that he or she is willing to cooperate, the Department will schedule a new interview or appointment no later than three weeks from the date of such notification. If the caretaker relative appears at the new interview or appointment, the Department will authorize assistance as of the date the caretaker relative notified the Department that he or she was willing to cooperate if this is the first penalty, or as of the first day of the fourth month if it is the second or third penalty.
  - 2) In the case of a caretaker relative for whom a sanction was imposed for failure to submit to a genetic test to establish paternity, he or she may demonstrate cooperation by submitting to the genetic test. If the caretaker relative notifies the Department that he or she is willing to cooperate, the Department

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will schedule a genetic test within three weeks from the date of such notification. If the caretaker relative submits to the genetic test, the Department will authorize assistance as of the date the caretaker relative notified the Department that he or she was willing to cooperate if this is the first penalty, or as of the first day of the fourth month if it is the second or third penalty.

3) In the case of a caretaker relative for whom a sanction was imposed for not attending a court or administrative appearance, he or she may demonstrate cooperation by attending the next court or administrative appearance or, once in a court or administrative case after 30 days have passed since the missed appearance, by signing a statement that he or she is now willing to cooperate and will attend the next scheduled court or administrative appearance. Assistance for the caretaker relative shall be authorized as of the date he or she demonstrates cooperation by either method if this is the first penalty, or as of the first day of the fourth month if it is the second or third penalty.

4) In the case of a caretaker relative for whom a sanction was imposed for failure to attend a court or administrative appearance or other failure to cooperate resulted in the dismissal of the court or administrative case, he or she may demonstrate cooperation by doing what he or she failed to do or, once in a court or administrative case after 60 days have passed since the dismissal, by signing a statement that he or she is now willing to cooperate. Assistance for the caretaker relative shall be authorized as of the date he or she demonstrates cooperation by either method if this is the first penalty, or as of the first day of the fourth month if it is the second or third penalty.

5) In the case of a caretaker relative for whom a sanction was imposed for not attesting, he or she may demonstrate cooperation by executing the attestation described in subsection (d)(4) of this Section. Assistance for the caretaker relative shall be authorized as of the date he or she executes the attestation if this is the first penalty, or as of the first day of the fourth month if it is the second or third penalty.

6) The Department shall not deny or terminate a pregnant caretaker relative's medical assistance because of the caretaker relative's failure to cooperate with the requirements of subsection (c) of this Section until at least 30 days have elapsed since termination of the pregnancy.

f) A sanction for failure or refusal to comply with the requirements of subsection (c) of this Section shall be rescinded at any level of the appeal process up through and including the final agency decision and any lost benefits will be restored, if the caretaker relative establishes good cause for failure or refusal.

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g) Sanctions under this Section, employment and training programs and the Responsibility and Services Plan (89 Ill. Adm. Code 112.79), and the School Attendance Initiative (89 Ill. Adm. Code 112.68(c)) shall be considered along one track. After a sanction is taken under one Section, a subsequent sanction under that Section or either of the other two Sections will be at the next sanction level, as described in Section 160.30(b)(1), (2) and (3) of this Section.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)



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- 1) Heading of the Part: Hospital Services
- 2) Code Citation: 89 Ill. Adm. Code 148
- 3) Section Numbers: Proposed Action:  
148.295 Amendment
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]
- 5) Complete Description of the Subjects and Issues Involved: These amendments to the Department's administrative rules concerning hospital reimbursement are being proposed to ensure the maintenance of critical hospital access for Medicaid clients regarding hospitals that receive payments under the CHAP (Critical Hospital Adjustment Payments) program. These proposed amendments are necessary because of the occasional uncertainty involved in the calculations of CHAP payment amounts which are based on many variables. These proposed amendments provide a mechanism whereby payment adjustments can be made according to the Director's discretion. These proposed amendments are not expected to result in additional Department expenditures.
- 6) Will these proposed amendments replace emergency amendments currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed amendments contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? No

- 10) Statement of Statewide Policy Objectives: These proposed amendments do not affect units of local government.

- 11) Time, Place, and Manner in which Interested Persons may comment on this proposed rulemaking: Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking. All comments must be in writing and should be addressed to:

Joanne Jones  
Bureau of Rules and Regulations  
Illinois Department of Public Aid  
201 South Grand Ave. E., 3rd Floor  
Springfield, Illinois 62763  
217/524-3215

The Department requests the submission of written comments within 30 days after the publication of this notice. The Department will consider all

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written comments it receives during the first notice period as required by Section 5-40 of the Illinois Administrative Procedure Act [5 ILCS 100/5-40].

These proposed amendments may have an impact on small businesses, small municipalities, and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80 and 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as small businesses, small municipalities, or not-for-profit corporations as part of any written comments they submit to the Department.

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: Hospitals that are eligible for Critical Hospital Adjustment Payments (CHAP)

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

- 13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent regulatory agendas because: This rulemaking was not anticipated by the Department when the two most recent regulatory agendas were published.

The full text of the Proposed Amendments begins on the next page:

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TITLE 89: SOCIAL SERVICES  
CHAPTER I: DEPARTMENT OF PUBLIC AID  
SUBCHAPTER d: MEDICAL PROGRAMS

## PART 148

## HOSPITAL SERVICES

## Section

- 148.10 Hospital Services  
148.20 Participation  
148.25 Definitions and Applicability  
148.30 General Requirements  
148.40 Special Requirements  
148.50 Covered Hospital Services  
148.60 Services Not Covered as Hospital Services  
148.70 Limitation On Hospital Services  
148.80 Organ Transplants Services Covered Under Medicaid (Repealed)  
148.82 Organ Transplant Services  
148.90 Heart Transplants (Repealed)  
148.100 Liver Transplants (Repealed)  
148.110 Bone Marrow Transplants (Repealed)  
148.120 Disproportionate Share Hospital (DSH) Adjustments  
148.130 Outlier Adjustments for Exceptionally Costly Stays  
148.140 Hospital Outpatient and Clinic Services  
148.150 Public Law 103-66 Requirements  
148.160 Payment Methodology for County-Owned Hospitals in an Illinois County with a Population of Over Three Million  
148.170 Payment Methodology for Hospitals Organized Under the University of Illinois Hospital Act  
148.175 Supplemental Disproportionate Share Payment Methodology for Hospitals Organized Under the Town Hospital Act  
148.180 Payment for Pre-operative Days, Patient Specific Orders, and Services Which Can Be Performed in an Outpatient Setting  
148.190 Copayments  
148.200 Alternate Reimbursement Systems  
148.210 Filing Cost Reports  
148.220 Pre September 1, 1991 Admissions  
148.230 Admissions Occurring on or after September 1, 1991  
148.240 Utilization Review and Furnishing of Inpatient Hospital Services Directly or Under Arrangements  
148.250 Determination of Alternate Payment Rates to Certain Exempt Hospitals  
148.260 Calculation and Definitions of Inpatient Per Diem Rates  
148.270 Determination of Alternate Cost Per Diem Rates for All Hospitals; Payment Rates for Certain Exempt Hospital Units; and Payment Rates for Certain Other Hospitals  
148.280 Reimbursement Methodologies for Children's Hospitals and Hospitals Reimbursed Under Special Arrangements  
148.285 Excellence in Academic Medicine Payments

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- 148.290 Adjustments and Reductions to Total Payments  
148.295 Critical Hospital Adjustment Payment (CHAP)  
148.296 Supplemental Critical Hospital Adjustment Payments (SCHAP)  
148.297 Pediatric Outpatient Adjustment Payments  
148.300 Payment  
148.310 Review Procedure  
148.320 Alternatives  
148.330 Exemptions  
148.340 Subacute Alcoholism and Substance Abuse Treatment Services  
148.350 Definitions  
148.360 Types of Subacute Alcoholism and Substance Abuse Treatment Services  
148.368 Volume Adjustment (Repealed)  
148.370 Payment for Subacute Alcoholism and Substance Abuse Treatment Services  
148.380 Rate Appeals for Subacute Alcoholism and Substance Abuse Treatment Services  
148.390 Hearings  
148.400 Special Hospital Reporting Requirements

AUTHORITY: Implementing Article III of the Illinois Health Finance Reform Act [20 ILCS 2215/Art. III] and implementing and authorized by Articles III, IV, V, VI, and Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. III, IV, V, VI and 12-13].

SOURCE: Sections 148.10 thru 148.390 recodified from 89 Ill. Adm. Code 140.94 thru 140.398 at 13 Ill. Reg. 9572; Section 148.120 recodified from 89 Ill. Adm. Code 140.110 at 13 Ill. Reg. 12118; amended at 14 Ill. Reg. 2553, effective February 9, 1990; emergency amendment at 14 Ill. Reg. 11392, effective July 1, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 15358, effective September 13, 1990; amended at 14 Ill. Reg. 16998, effective October 4, 1990; amended at 14 Ill. Reg. 18293, effective October 30, 1990; amended at 14 Ill. Reg. 18499, effective November 8, 1990; emergency amendment at 15 Ill. Reg. 10502, effective July 1, 1991, for a maximum of 150 days; emergency expired October 29, 1991; emergency amendment at 15 Ill. Reg. 12005, effective August 9, 1991, for a maximum of 150 days; emergency expired January 6, 1992; emergency amendment at 15 Ill. Reg. 16166, effective November 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 18684, effective December 23, 1991; amended at 16 Ill. Reg. 6255, effective March 27, 1992; emergency amendment at 16 Ill. Reg. 11335, effective June 30, 1992, for a maximum of 150 days; emergency expired November 27, 1992; emergency amendment at 16 Ill. Reg. 11942, effective July 10, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 14778, effective October 1, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 19873, effective December 7, 1992; amended at 17 Ill. Reg. 131, effective December 21, 1992; amended at 17 Ill. Reg. 3296, effective March 1, 1993; amended at 17 Ill. Reg. 6649, effective April 21, 1993; amended at 17 Ill. Reg. 14643, effective August 30, 1993; emergency amendment at 17 Ill. Reg. 17323, effective October 1, 1993, for a maximum of 150 days; amended at 18 Ill. Reg. 3450, effective February 28, 1994; emergency amendment at 18



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Ill. Reg. 12853, effective August 2, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 14117, effective September 1, 1994; amended at 18 Ill. Reg. 17648, effective November 29, 1994; amended at 19 Ill. Reg. 1067, effective January 20, 1995; emergency amendment at 19 Ill. Reg. 3510, effective March 1, 1995, for a maximum of 150 days; emergency expired July 29, 1995; emergency amendment at 19 Ill. Reg. 6709, effective May 12, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 10060, effective June 29, 1995; emergency amendment at 19 Ill. Reg. 10752, effective July 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 13009, effective September 5, 1995; amended at 19 Ill. Reg. 16630, effective November 28, 1995; amended at 20 Ill. Reg. 872, effective December 29, 1995; amended at 20 Ill. Reg. 7912, effective May 31, 1996; emergency amendment at 20 Ill. Reg. 9281, effective July 1, 1996, for a maximum of 150 days; emergency amendment at 20 Ill. Reg. 12510, effective September 1, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 15722, effective November 27, 1996; amended at 20 Ill. Reg. 15722, effective November 27, 1996; amended at 21 Ill. Reg. 607, effective January 2, 1997; amended at 21 Ill. Reg. 8386, effective June 23, 1997; emergency amendment at 21 Ill. Reg. 9552, effective July 1, 1997, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 9822, effective July 2, 1997, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 10147, effective August 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 13349, effective September 23, 1997; emergency amendment at 21 Ill. Reg. 13675, effective September 27, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 16161, effective November 26, 1997; amended at 22 Ill. Reg. 1408, effective December 29, 1997; amended at 22 Ill. Reg. 3083, effective January 26, 1998; amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## Section 148.295 Critical Hospital Adjustment Payments (CHAP)

Critical Hospital Adjustment Payments (CHAP) shall be made to all eligible hospitals excluding county-owned hospitals, as described in Section 148.25 (b)(1)(A), and hospitals organized under the University of Illinois Hospital Act, as described in Section 148.25(b)(1)(B), for inpatient admissions occurring on or after July 1, 1995, in accordance with this Section.

## a) Trauma Center Adjustments (TCA)

The Department shall make a trauma center adjustment (TCA) to Illinois hospitals recognized, as of the last day of June preceding the CHAP rate period, as a Level I or Level II trauma center by the Illinois Department of Public Health, in accordance with the provisions of subsections (a)(1) through (a)(3) below.

## 1) Level I Trauma Center Adjustment (TCA).

A) Criteria. Illinois hospitals that, on the last day of June preceding the CHAP rate period, are recognized as a Level I trauma center by the Illinois Department of Public Health shall receive the Level I trauma center adjustment.

B) Adjustment. Illinois hospitals meeting the criteria specified in subsection (a)(1)(A) above shall receive an adjustment as follows:

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- i) Hospitals with Medicaid trauma admissions equal to or greater than the mean Medicaid trauma admissions, for all hospitals qualifying under subsection (a)(1)(A) above, shall receive an adjustment of \$19,700 per Medicaid trauma admission in the CHAP base period.
  - ii) Hospitals with Medicaid trauma admissions less than the mean Medicaid trauma admissions, for all hospitals qualifying under subsection (a)(1)(A) above, shall receive an adjustment of \$12,500 per Medicaid trauma admission in the CHAP base period.
- 2) Level II Rural Trauma Center Adjustment (TCA). Illinois rural hospitals, as defined in Section 148.25(g)(3), that, on the last day of June preceding the CHAP rate period, are recognized as a Level II trauma center by the Illinois Department of Public Health shall receive an adjustment of \$9,900 per Medicaid trauma admission in the CHAP base period.
  - 3) Level II Urban Trauma Center Adjustment (TCA). Illinois urban hospitals, as described in Section 148.25(g)(4), that, on the last day of June preceding the CHAP rate period, are recognized as Level II trauma centers by the Illinois Department of Public Health shall receive an adjustment of \$9,900 per Medicaid trauma admission in the CHAP base period, provided that such hospital meets the criteria described below:
    - A) The hospital is located in a county with no Level I trauma center; and
    - B) The hospital is located in a Health Professional Shortage Area (HPSA) (42 CFR 5), as of the last day of June preceding the CHAP rate period, and has a Medicaid trauma admission percentage at or above the mean of the individual facility values determined in subsection (a)(3)(A) above; or the hospital is not located in a HPSA (42 CFR 5) and has a Medicaid trauma admission percentage that is at least the mean plus one standard deviation of the individual facility values determined in subsection (a)(3)(A) above.
  - b) Rehabilitation Hospital Adjustment (RHA)
    - 1) Treatment Component. All hospitals defined in subsection (b) above shall receive \$3,800 per Medicaid Level I rehabilitation admission in the CHAP base period.
    - 2) Facility Component. All hospitals defined in subsection (b) above shall receive a facility component that shall be based upon the number of Medicaid Level I rehabilitation admissions in the CHAP base period as follows:

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A) Hospitals with fewer than 90 Medicaid Level I rehabilitation admissions in the CHAP base period shall receive a facility component of \$250,000 in the CHAP rate period.

B) Hospitals with 90 or more Medicaid Level I rehabilitation admissions in the CHAP base period shall receive a facility component of \$575,000 in the CHAP rate period.

3) Health Professional Shortage Area Adjustment Component. Hospitals defined in subsection (b) above, that are located in a Health Professional Shortage Area (HPSA) (42 CFR 5) as of the last day of June preceding the CHAP rate period, shall receive \$300 per Medicaid Level I rehabilitation inpatient day in the CHAP base period.

c) Direct Hospital Adjustment (DHA) Criteria

To qualify for the DHA under this subsection (c), hospitals must meet one of the following criteria:

1) Be an Illinois hospital located outside of Health Service Area (HSA) six that meets one of the following criteria:

A) Has a Medicaid inpatient utilization rate on the last day of June preceding the CHAP rate period, as defined in Section 148.120(k)(5), greater than 60 percent and has an average length of stay of less than ten days.

B) Is a major teaching hospital with 35 or more graduate medical education programs accredited by the American Accreditation Council for Graduate Medical Education, the American Osteopathic Association Division of Post-doctoral Training, or the American Dental Association Joint Commission on Dental Accreditation.

ii) Be a hospital located in HSA six, excluding psychiatric and rehabilitation hospitals as defined in 89 Ill. Adm. Code 149.50(c)(1) and (c)(2), that meets one of the following criteria:

A) Is a hospital whose sum of the critical weighting factors is greater than one standard deviation above the mean of the summed critical weighting factors for all hospitals located within the same planning area. The critical weighting factor is determined as follows:

i) Hospitals that, on the last day of June preceding the CHAP rate period, are designated as a Level III, II, or I Perinatal Center by the Illinois Department of Public Health shall receive a critical weighting factor of 10, 7.5, or 5 respectively depending on the hospital's perinatal level designation.

ii) Hospitals that, on the last day of June preceding the CHAP rate period, are recognized as a Level I or II Trauma Center by the Illinois Department of Public Health shall receive a critical weighting factor of ten or five respectively depending on the hospital's trauma level designation.

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iii) Hospitals that, on the last day of June preceding the CHAP rate period, are eligible for disproportionate share payments as described in Section 148.120(g)(1) or (g)(2) shall receive a critical weighting factor of five.

iv) Hospitals that have an occupancy ratio, as determined by the Illinois Department of Public Health (IDPH), based upon the most current IDPH published report entitled "Bed Count, Average Length of Stay, Average Daily Census and Percent Occupancy for Non-Federal Hospitals in Illinois", which is available to the Illinois Department of Public Aid on the last day of June preceding the CHAP rate period, which is equal to or greater than the mean occupancy ratio for all hospitals in the planning area shall receive a critical weighting factor of five.

v) Hospitals which have Medicaid obstetrical care admissions in the CHAP base period that are equal to or greater than one-half a standard deviation above the mean Medicaid obstetrical care admissions in their planning area shall receive a critical weighting factor of ten. If the hospital's Medicaid obstetrical care admissions are greater than the mean but less than one-half a standard deviation above the mean Medicaid obstetrical care admissions in their planning area, the hospital shall receive a critical weighting factor of five.

vi) Hospitals that on the last day of June preceding the CHAP rate period have a Medicaid inpatient utilization rate as defined in Section 148.120(k)(5) which is equal to or greater than one-half a standard deviation above the mean Medicaid inpatient utilization rate in their planning area, shall receive a critical weighting factor of ten. If the hospital's Medicaid inpatient utilization rate is greater than the mean but less than one-half a standard deviation above the mean Medicaid inpatient utilization rate in their planning area, the hospital shall receive a critical weighting factor of five.

vii) Hospitals which have Medicaid general care admissions in the CHAP base period that are equal to or greater than one-half a standard deviation above the mean Medicaid general care admissions in their planning area shall receive a critical weighting factor of ten. If the hospital's Medicaid general care admissions are greater than the mean but less than one-half a standard deviation above the mean Medicaid general care admissions in their planning area, the hospital shall receive a critical weighting factor of five.



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viii) shall receive a critical weighting factor of five. Hospitals which have a cost per day at 80 percent occupancy that is less than or equal to one-half a standard deviation below the mean cost per day at 80 percent occupancy in their planning area shall receive a critical weighting factor of ten. If the hospital's cost per day at 80 percent occupancy is greater than one-half a standard deviation below the mean cost per day at 80 percent occupancy but less than the mean cost per day at 80 percent occupancy in their planning area, the hospital shall receive a critical weighting factor of five.

B) Is a major teaching hospital with 40 or more graduate medical education programs accredited by the American Accreditation Council for Graduate Medical Education, the American Osteopathic Association Division of Post-doctoral Training, or the American Dental Association Joint Commission on Dental Accreditation.

C) Is a hospital with 3,400 or more total Medicaid admissions in the CHAP base period.

3) Be a hospital qualifying under subsection (c)(2) above that has Medicaid obstetrical care admissions in the CHAP base period which are equal to or greater than 2,400.

4) Be a hospital qualifying under subsection (c)(2) above that on the last day of June preceding the CHAP rate period, is designated as a Level III or II Perinatal Center by the Illinois Department of Public Health, and that has a Medicaid inpatient utilization rate, as defined in Section 148.120(k)(5), which is greater than one-half a standard deviation above the statewide mean Medicaid inpatient utilization rate, as defined in Section 148.120(k)(3), and that has at least one obstetrical graduate medical education program accredited by the American Accreditation Council for Graduate Medical Education, the American Osteopathic Association Division of Post-doctoral Training, or the American Dental Association Joint Commission on Dental Accreditation.

5) Be a children's hospital, which means a hospital devoted exclusively to caring for children. A hospital which includes a facility devoted exclusively to caring for children that is separately licensed as a hospital by a municipality shall be considered a children's hospital to the degree that the hospital's Medicaid care is provided to children.

d) DHA Adjustment

Calculation of the DHA is as follows:

1) Hospitals qualifying under subsection (c)(1)(A) above shall receive a DHA of \$60 multiplied by the DHA Medicaid days in the CHAP base period.

2) Hospitals qualifying under subsection (c)(1)(B), (c)(2) or (c)(5)

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above shall receive a DHA of \$30 multiplied by the DHA Medicaid days in the CHAP base period.

3) Hospitals qualifying under subsection (c)(5) above which have a Medicaid inpatient utilization rate, as defined in Section 148.120(k)(5), on the last day of June preceding the CHAP rate period, that is greater than 85 percent shall receive an additional \$20 multiplied by the DHA Medicaid days in the CHAP base period.

4) Hospitals qualifying under subsection (c)(2)(B) above shall receive an additional \$10 multiplied by the DHA Medicaid days in the CHAP base period.

5) Hospitals qualifying under subsection (c)(3) or (c)(4) above shall receive an additional \$120 multiplied by the DHA Medicaid days in the CHAP base period if their Medicaid inpatient utilization rate, as defined in Section 148.120(k)(5), on the last day of June preceding the CHAP rate period, is equal to or greater than 50 percent; or \$65 multiplied by the DHA Medicaid days in the CHAP base period if their Medicaid inpatient utilization rate, as defined in Section 148.120(k)(5), on the last day of June preceding the CHAP rate period, is less than 50 percent.

e) Rural Critical Hospital Adjustment Payments (RCHAP)

Rural Critical Hospital Adjustment Payments (RCHAP) shall be made to rural hospitals, as described in 89 Ill. Adm. Code 140.80(j)(1), for certain inpatient admissions occurring on or after September 1, 1996. The Department shall make a RCHAP adjustment payment to hospitals qualifying under this subsection at a rate that is the greater of:

1) the product of \$1,490 multiplied by the number of RCHAP Obstetrical Care Admissions in the CHAP base period, or

2) the product of \$150 multiplied by the number of RCHAP General Care Admissions in the CHAP base period.

f) Each eligible hospital's critical hospital adjustment payment for the CHAP rate period shall equal the sum of the amounts described in subsections (a), (b), (d) and (e) above. The critical hospital adjustment payments shall be paid to eligible hospitals on a quarterly basis.

g) Critical Hospital Adjustment Limitations

Hospitals that qualify for trauma center adjustments under subsection (a) shall not be eligible for the total trauma center adjustment if, during the CHAP rate period, the hospital is no longer recognized by the Illinois Department of Public Health as a Level I trauma center as required for the adjustment described in subsection (a)(1) above, or a Level II trauma center as required for the adjustment described in subsection (a)(2) or (a)(3) above. In these instances, the adjustments calculated shall be pro-rated, as applicable, based upon the date that such recognition ceased.

h) In order to maintain critical hospital access, certain hospitals, as determined by the Director, may receive a CHAP payment for the CHAP

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rate period ending on June 30, 1998, in an amount determined by the Director.

**1) Critical Hospital Adjustment Payment Definitions**

The definitions of terms used with reference to calculation of the CHAP required by this Section are as follows:

1) "CHAP base period" means State Fiscal Year 1994 for CHAP payments calculated for the July 1, 1995, CHAP rate period; State Fiscal Year 1995 for CHAP payments calculated for the July 1, 1996, CHAP rate period; etc.

2) "CHAP rate period" means, beginning July 1, 1995, the 12 month period beginning on July 1 of the year and ending June 30 of the following year.

3) "Cost per day at 80 percent occupancy" means the estimated inpatient cost per day had the hospital been operating at an 80 percent occupancy rate.

4) "Medicaid general care admission" means hospital inpatient admissions which were subsequently adjudicated by the Department through the last day of June preceding the CHAP rate period and contained within the Department's paid claims data base, for recipients of medical assistance under Title XIX of the Social Security Act, excluding admissions for normal newborns, Medicare/Medicaid crossover admissions, psychiatric and rehabilitation admissions.

5) "Medicaid inpatient day" means hospital inpatient days which were subsequently adjudicated by the Department through the last day of June preceding the CHAP rate period and contained within the Department's paid claims data base, for recipients of medical assistance under Title XIX of the Social Security Act, excluding days for normal newborns and Medicare/Medicaid crossover days.

6) "Medicaid Level I rehabilitation admissions" means those claims billed as Level I admissions which were subsequently adjudicated by the Department through the last day of June preceding the CHAP rate period and contained within the Department's paid claims data base, with an occurrence code of 63 when applicable and an ICD-9-CM principal diagnosis code of: 054.3, 310.1 through 310.2, 320.1, 336.0 through 336.9, 344.0 through 344.2, 344.8 through 344.9, 348.1, 801.30, 803.10, 803.84, 806.0 through 806.19, 806.20 through 806.24, 806.26, 806.29 through 806.34, 806.36, 806.4 through 806.5, 851.06, 851.80, 853.05, 854.0 through 854.04, 854.06, 854.1 through 854.14, 854.16, 854.19, 905.0, 907.0, 907.2, 952.0 through 952.09, 952.10 through 952.16, 952.2, and V57.0 through V57.89, excluding admissions for normal newborns.

7) "Medicaid Level I rehabilitation inpatient day" means the days associated with the claims defined in subsection (i)(6) ~~that~~ above.

8) "Medicaid obstetrical care admission" means hospital inpatient admissions which were subsequently adjudicated by the Department

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through the last day of June preceding the CHAP rate period and contained within the Department's paid claims data base, for recipients of medical assistance under Title XIX of Social Security Act, with an ICD-9-CM principal diagnosis code of 640.0 through 648.9 with a 5th digit of 1 or 2; 650; 651.0 through 659.9 with a 5th digit of 1, 2, 3, or 4; 660.0 through 669.9 with a 5th digit of 1, 2, 3, or 4; 670.0 through 676.9 with a 5th digit of 1 or 2; or V27 through V27.9; or V30 through V39.9; or any ICD-9-CM principal diagnosis code that is accompanied with a surgery procedure code between 72 and 75.99; and specifically excludes Medicare/Medicaid crossover claims.

9) "Medicaid psychiatric days", as used in subsection (i)(18) ~~that~~ below, means hospital inpatient days for the Supplemental CHAP base that are billed to the Department with a category of service 21.

10) "Medicaid rehabilitation days", as used in subsection (i)(18) ~~that~~ below, means hospital inpatient days for the Supplemental CHAP base that are billed to the Department with a category of service 22.

11) "Medicaid trauma admission" means those claims billed as admissions which were subsequently adjudicated by the Department through the last day of June preceding the CHAP rate period and contained within the Department's paid claims data base, with an ICD-9-CM principal diagnosis code of: 800.0 through 800.99, 801.0 through 801.99, 802.0 through 802.99, 803.0 through 803.99, 804.0 through 804.99, 805.0 through 805.98, 806.0 through 806.99, 807.0 through 807.69, 808.0 through 808.9, 809.0 through 809.1, 828.0 through 828.1, 839.0 through 839.3, 839.7 through 839.9, 850.0 through 850.9, 851.0 through 851.99, 852.0 through 852.59, 853.0 through 853.19, 854.0 through 854.19, 860.0 through 860.15, 861.0 through 861.32, 862.8, 863.0 through 863.99, 864.0 through 864.19, 865.0 through 865.19, 866.0 through 866.13, 867.0 through 867.9, 868.0 through 868.19, 869.0 through 869.1, 887.0 through 887.7, 896.0 through 896.3, 897.0 through 897.7, 900.0 through 900.9, 902.0 through 904.9, 925, 926.8, 929.0 through 929.99, 958.4, 958.5, 990 through 994.99. For those hospitals recognized as Level I trauma centers solely for pediatric trauma cases, Medicaid trauma admissions are only calculated for the claims billed as admissions, excluding admissions for normal newborns, which were subsequently adjudicated by the Department through the last day of June preceding the CHAP rate period and contained within the Department's paid claims data base, with ICD-9-CM diagnoses within the above ranges for children under the age of 18 excluding admissions for normal newborns.

12) "Medicaid trauma admission percentage" means a fraction, the numerator of which is the hospital's Medicaid trauma admissions and the denominator of which is the total Medicaid trauma admissions in a given 12 month period for all Level II urban



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- trauma centers.
- 13) "CHAP base period" means State Fiscal Year 1995 for RCHAP's calculated for the July 1, 1996, CHAP rate period; State Fiscal Year 1996 for RCHAP's calculated for July 1, 1997, CHAP rate period; etc.
- 14) "RCHAP general care admission" means Medicaid General Care Admissions, as defined in subsection (i)(4) ~~tht+t~~ above, less RCHAP Obstetrical Care Admissions, occurring in the CHAP base period.
- 15) "RCHAP obstetrical care admissions" means Medicaid General Care Admissions, as defined in subsection (i)(4) ~~tht+t~~ above, with a Diagnosis Related Group (DRG) of 370 through 375, occurring in the CHAP base period.
- 16) "Total Medicaid admissions" means hospital inpatient admissions for the Supplemental CHAP base period for recipients of medical assistance under Title XIX of the Social Security Act, excluding admissions for normal newborns and Medicare/Medicaid crossover admissions.
- 17) "Total Medicaid days" means hospital inpatient days for the CHAP base period for recipients of medical assistance under Title XIX of the Social Security Act, excluding days for normal newborns and Medicare/Medicaid crossover admissions.
- 18) "DHA Medicaid days" means total Medicaid days that include Medicaid psychiatric days and Medicaid rehabilitation days for the CHAP base period multiplied by a factor of two.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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- 1) Heading of the Part: Community Living Facilities Code
- 2) Code Citation: 77 Ill. Adm. Code 370
- 3) Section Numbers: Proposed Action:  
     370.160 Amendments  
     370.165 New Section  
     370.715 Amendments
- 4) Statutory Authority: Community Living Facilities Act [210 ILCS 35]
- 5) A Complete Description of the Subjects and Issues Involved: This rulemaking implements legislation enacted in 1997. Section 370.160 is amended and Section 370.165 is being added in response to P.A. 90-341 (effective January 1, 1998), which created the Alzheimer's Special Care Disclosure Act and amended the Nursing Home Care Act. A facility that has an Alzheimer's special care unit or center is required to provide information to the Department at the time of licensure renewal concerning the services offered. The information must also be provided to actual or potential clients. Section 370.715 is being amended to add disqualifying crimes under the Health Care Worker Background Check Act, pursuant to P.A. 90-441 (effective January 1, 1998). Additional new statutory language states that an employer need not initiate an additional criminal background check for an employee for whom a background check was initiated between January 1, 1996, and January 1, 1998.
- The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.
- The Department anticipates adoption of this rulemaking approximately six to nine months after publication of the notice in the *Illinois Register*.
- 6) Will this Rulemaking Replace an Emergency Rule Currently in Effect? No
- 7) Does this Rulemaking Contain an Automatic Repeal Date? No
- 8) Does this Rulemaking Contain Any Incorporations By Reference? No
- 9) Are there any other Proposed Amendments Pending on this Part? No
- 10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State Mandate.
- 11) Time, Place, and Manner in which Interested Persons May Comment on this Rulemaking: Interested persons may present their comments concerning these rules by writing within 45 days after this issue of the *Illinois*

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## Register to:

Ms. Gail M. Devito  
Division of Legal Services  
Illinois Department of Public Health  
535 West Jefferson, Fifth Floor  
Springfield, Illinois 62761  
217/782-2043  
Email: rules@idph.state.il.us

These rules may have an impact on small businesses. In accordance with Sections 1-75 and 5-30 of the Illinois Administrative Procedure Act, any small business may present their comments in writing to Gail M. Devito at the above address.

Any small business (as defined in Section 1-75 of the Illinois Administrative Procedure Act) commenting on these rules shall indicate their status as such, in writing, in their comments.

12) Initial Regulatory Flexibility Analysis:

- A) Type of Small Businesses, Small Municipalities and Not-for-Profit Corporations Affected: Community living facilities
- B) Reporting, Bookkeeping or Other Procedures Required for Compliance: New reporting procedures for facilities with Alzheimer's units or centers are prescribed herein.
- C) Types of Professional Skills Necessary for Compliance: Professional skills necessary for the operation of a long-term care facility

- 13) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because: This rulemaking implements legislation that was passed after the publication of the Department's most recent Regulatory Agenda

The full text of the Proposed Amendments begins on the next page:

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

TITLE 77: PUBLIC HEALTH  
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH  
SUBCHAPTER c: LONG-TERM CARE FACILITIES

## PART 370

## COMMUNITY LIVING FACILITIES CODE

## SUBPART A: GENERAL PROVISIONS

Section	General Requirements
370.110	Application for License
370.120	Licensee
370.130	Issuance of an Initial License for a New Facility
370.140	Issuance of an Initial License Due to a Change of Ownership
370.150	Issuance of a Renewal License
370.160	Alzheimer's Special Care Disclosure
370.165	Denial or Revocation
370.170	Experimental Program Conflicting With Requirements
370.180	Inspections
370.190	Information to Be Made Available to the Public By the Licensee
370.200	Ownership Disclosure
370.210	Variances
370.220	Alcoholism Treatment Programs In Community Living Facilities
370.230	Definitions
370.240	

## SUBPART B: ADMINISTRATION

Section	
370.400	Administration
	SUBPART C: POLICIES
	Social and Vocational Training Program Policies
	Admission and Discharge Policies
	Agreement Between Resident and Facility
	General Policies
	Personnel Policies
	SUBPART D: PERSONNEL
	Personnel
	Health Care Worker Background Check
	Personnel Policies
	SUBPART E: HEALTH MAINTENANCE SERVICES

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Section  
370.810 Medical Care Policies  
370.820 Communicable Disease Policies  
370.830 Behavior Emergencies  
370.840 Medication Policies

## SUBPART F: PROGRAM SERVICES

Section  
370.1010 Program Evaluation  
370.1020 Program and Services

## SUBPART G: RECORDS

Section  
370.1210 General  
370.1220 Other Records  
370.1230 Confidentiality

## SUBPART H: FOOD SERVICE

Section  
370.1410 Food Service  
370.1420 Adequacy of Diet  
370.1430 Therapeutic Diets  
370.1440 Scheduling of Meals  
370.1450 Food Preparation and Service  
370.1460 Food Handling Sanitation  
370.1470 Kitchen Equipment, Utensils and Supplies

## SUBPART I: MAINTENANCE, HOUSEKEEPING AND LAUNDRY

Section  
370.1610 Maintenance  
370.1620 Housekeeping  
370.1630 Laundry Services

## SUBPART J: FURNISHINGS, EQUIPMENT AND SUPPLIES

Section  
370.1810 Furnishings  
370.1820 Equipment and Supplies

## SUBPART K: WATER SUPPLY AND SEWAGE DISPOSAL

Section  
370.2010 Codes  
370.2020 Water Supply

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370.2030 Sewage Disposal  
370.2040 Plumbing

## SUBPART L: DESIGN AND CONSTRUCTION STANDARDS FOR NEW COMMUNITY LIVING FACILITIES

Section  
370.2210 Applicability of Standards  
370.2220 Codes and Standards  
370.2230 Preparation of Drawings and Specifications  
370.2240 Site  
370.2250 Administration  
370.2260 Bedrooms  
370.2270 Nurses' Station  
370.2280 Bath and Toilet Rooms  
370.2290 Living, Dining Room, and Activity Room(s)  
370.2300 Kitchen  
370.2310 Laundry Room  
370.2320 Housekeeping and Storage  
370.2330 Building General  
370.2340 Exit Facilities and Subdivision of Floor Areas  
370.2350 Stairways and Vertical Openings  
370.2360 Hazardous Areas  
370.2370 Structural  
370.2380 Mechanical Systems  
370.2390 Plumbing Systems  
370.2400 Electrical Systems  
370.2410 Fire Alarm and Detection System  
370.2420 Emergency Electrical System  
370.2430 Fire Protection

## SUBPART M: DESIGN AND CONSTRUCTION STANDARDS FOR EXISTING COMMUNITY LIVING FACILITIES

Section  
370.2610 Applicability of Standards  
370.2620 Codes and Standards  
370.2630 Preparation of Drawings and Specifications  
370.2640 Site  
370.2650 Administration and Public Areas  
370.2660 Bedrooms  
370.2670 Nurses' Station  
370.2680 Bath and Toilet Rooms  
370.2690 Living, Dining Room, and Activity Room(s)  
370.2700 Kitchen  
370.2710 Laundry Room  
370.2720 Housekeeping and Storage  
370.2730 Building General



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370.2740 Exit Facilities and Subdivision of Floor Areas  
 370.2750 Stairways and Vertical Openings  
 370.2760 Hazardous Areas  
 370.2770 Structural  
 370.2780 Mechanical Systems  
 370.2790 Plumbing Systems  
 370.2800 Electrical Systems  
 370.2810 Fire Alarm and Detection System  
 370.2820 Emergency Electrical System  
 370.2830 Fire Protection

## SUBPART N: RESIDENT'S RIGHTS

## Section

370.3010 General  
 370.3020 Medical and Personal Care Program  
 370.3030 Restraints  
 370.3040 Abuse and Neglect  
 370.3050 Communication and Visitation  
 370.3060 Resident's Funds  
 370.3070 Private Right of Action  
 370.3080 Transfer and/or Discharge  
 370.3090 Complaint Procedures  
 370.3100 Confidentiality  
 370.3110 Facility Implementation

## APPENDIX A

## APPENDIX B

AUTHORITY: Implementing and authorized by the Community Living Facilities Act [210 ILCS 35].

SOURCE: Emergency rules adopted at 6 Ill. Reg. 379, effective January 1, 1982, for a maximum of 150 days; adopted at 6 Ill. Reg. 6226, effective May 19, 1982; codified at 8 Ill. Reg. 19476; amended at 8 Ill. Reg. 24706, effective December 7, 1984; emergency amendment at 17 Ill. Reg. 9117, effective June 7, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 19509, effective November 1, 1993; emergency amendments at 20 Ill. Reg. 456, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 9982, effective July 15, 1996; amended at 22 Ill. Reg. 3919, effective February 13, 1998; amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

## Section 370.160 Issuance of a Renewal License

At least one-hundred-twenty-( 120) days, but not more than one-hundred-fifty-(

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150+ days, prior to license expiration, the licensee shall submit an application for renewal of the license in such form and containing such information as the Department requires. If the Department determines that the community living facility is in substantial compliance with the Act and this Part, and has provided to the Department an accurate disclosure document in accordance with the Alzheimer's Special Care Disclosure Act, if applicable (see Section 370.165 of this Part), the Department shall renew the regular license for another one-year period. (Section 9 of the Act) If the application is approved, and the facility is in compliance with all other licensure requirements, the license shall be renewed for an additional one-year period.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

## Section 370.165 Alzheimer's Special Care Disclosure

A facility that offers to provide care for persons with Alzheimer's disease through an Alzheimer's special care unit or center shall disclose to the Department or to a potential or actual client of the facility the following information in writing on request of the Department or client:

- The form of care or treatment that distinguishes the facility as suitable for persons with Alzheimer's disease;
- The philosophy of the facility concerning the care or treatment of persons with Alzheimer's disease;
- The facility's pre-admission, admission, and discharge procedures;
- The facility's assessment, care planning, and implementation guidelines in the care and treatment of persons with Alzheimer's disease;
- The facility's minimum and maximum staffing ratios, specifying the general licensed health care provider to client ratio and the trainee health care provider to client ratio;
- The facility's physical environment;
- Activities available to clients at the facility;
- The role of family members in the care of clients at the facility;
- The costs of care and treatment under the program or at the center. (Section 15 of the Alzheimer's Special Care Disclosure Act)

(Source: Added at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

## SUBPART D: PERSONNEL

## Section 370.715 Health Care Worker Background Check

- The facility shall not knowingly hire any individual after January 1, 1996, in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the following offenses (Section 25 of the Health Care

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Worker Background Check Act [225 ILCS 46/25]]:

- 1) Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1 and 8-1.2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 8-1.1 and 8-1.2));
- 2)†† Murder, homicide, manslaughter or concealment of a homicidal death (Sections 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2 and 9-3.3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3); Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. **Sections** 3, 236, 358, 360, 361, 362, 363, 364, 364a, 365, 370, 373, 373a, 417, and 474));
- 3)† Kidnaping or child abduction (Sections 10-1, 10-2, 10-5 and 10-7 of the Criminal Code of 1961 [720 ILCS 5/10-1, 10-2, 10-5, and 10-7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-1, 10-2, 10-5, and 10-7); Ill. Rev. Stat. 1985, ch. 38, par. 10-6; Ill. Rev. Stat. 1961, ch. 38, pars. **Sections** 384 to 386));
- 4)†† Unlawful restraint or forcible detention (Sections 10-3, 10-3.1, and 10-4 of the Criminal Code of 1961 [720 ILCS 5/10-3, 10-3.1, and 10-4] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-3, 10-3.1, and 10-4); Ill. Rev. Stat. 1961, ch. 38, pars. **Sections** 252, 252.1, and 252.4));
- 5) Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography (Sections 11-6, 11-9.1, 11-19.2, and 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-6, 11-9.1, 11-19.2 and 11-20.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-6, 11-19.2 and 11-20.1; Ill. Rev. Stat. 1983, ch. 38, par. 11-20a; Ill. Rev. Stat. 1961, ch. 38, pars. 103 and 104));
- 6)†† Assault, battery or infliction of great bodily harm (Sections 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7 of the Criminal Code of 1961 [720 ILCS 5/12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7); Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. **Sections** 55, 56, and 56a to 60b));
- 7) Aggravated stalking (Section 12-7.4 of the Criminal Code of 1961 [720 ILCS 5/12-7.4] (formerly Ill. Rev. Stat. 1991, ch. 37, par. 12-7.4));
- 8) Home invasion (Section 12-11 of the Criminal Code of 1961 [720 ILCS 5/12-11] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-11));
- 9)† Sexual assault or sexual abuse (Sections 12-13, 12-14, 12-14.1, 12-15, and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-13, 12-14, 12-14.1, 12-15, and 12-16] (formerly Ill. Rev. Stat. 1991,

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- ch. 38, pars. 11-1, 11-2, 11-3, 11-4, 11-5, 12-13, 12-14, 12-15, and 12-16; Ill. Rev. Stat. 1985, ch. 38, pars. 11-1, 11-4, and 11-4.1; Ill. Rev. Stat. 1961, ch. 38, pars. **Sections** 109, 141, 142, 490, and 491));
- 10)† Abuse or gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-19));
- 11)†† Criminal neglect of an elderly or disabled person (Section 12-21 of the Criminal Code of 1961 [720 ILCS 5/12-21] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-21));
- 12) Endangering the life or health of a child (Section 12-21.6 of the Criminal Code of 1961 [720 ILCS 5/12-21.6] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354; Ill. Rev. Stat. 1961, ch. 38, par. 251));
- 13) Ritual mutilation, ritualized abuse of a child (Sections 12-32 and 12-33 of the Criminal Code of 1961 [720 ILCS 5/12-32 and 12-33] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-32 and 12-33));
- 14)†† Theft, retail theft (Sections 16-1 and 16A-3 of the Criminal Code of 1961 [720 ILCS 5/16-1 and 16A-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 16-1 and 16A-3; Ill. Rev. Stat. 1961, ch. 38, pars. **Sections** 62, 207 to 218, 240 to 244, 246, 253, 254.1, 258, 262, 262a, 273, 290, 291, 301a, 354, 387 to 388, 389, 393 to 400, 404a to 404c, 438, 492 to 496));
- 15)† Financial exploitation of an elderly or disabled person (Section 16-1.3 of the Criminal Code of 1961 [720 ILCS 5/16-1.3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 16-1.3));
- 16) Forgery (Section 17-3 of the Criminal Code of 1961 [720 ILCS 5/17-3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 17-3; Ill. Rev. Stat. 1961, ch. 38, pars. 151 and 277 to 286));
- 17)†† Robbery, armed robbery (Sections 18-1 and 18-2 of the Criminal Code of 1961 [720 ILCS 5/18-1 and 18-2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 18-1 and 18-2));
- 18) Vehicular hijacking, aggravated vehicular hijacking, aggravated robbery (Sections 18-3, 18-4, and 18-5 of the Criminal Code of 1961 [720 ILCS 5/18-3, 18-4, and 18-5]);
- 19)†† Burglary, residential burglary (Sections 19-1 and 19-3 of the Criminal Code of 1961 [720 ILCS 5/19-1 and 19-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 19-1 and 19-3; Ill. Rev. Stat. 1961, ch. 38, pars. **Sections** 84 to 86, 88, and 501));
- 20)†† Criminal trespass to a residence (Section 19-4 of the Criminal Code of 1961 [720 ILCS 5/19-4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 19-4));
- 21)†† Arson (Sections 20-1 and 20-1.1 of the Criminal Code of 1961 [720 ILCS 5/20-1 and 20-1.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 20-1 and 20-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. **Sections** 48 to 53 and 236 to 238));
- 22)†† Unlawful use of weapons, or aggravated discharge of a firearm,



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or reckless discharge of a firearm (Sections 24-1 and 24-1.2, and 24-1.5 of the Criminal Code of 1961 [720 ILCS 5/24-1, and 24-1.2, and 24-1.5] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 24-1 and 24-1.2); Ill. Rev. Stat. 1961, ch. 38, pars. Sections 152, 152a, 155, 155a to 158b, 414a to 414c, 414e and 414g);

23) Armed violence - elements of the offense (Section 33A-2 of the Criminal Code of 1961 [720 ILCS 5/33A-2] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 33A-2));

24) Those provided in Section 4 of the Wrongs to Children Act (Section 4 of the Wrongs to Children Act [720 ILCS 150/4] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354));

25) Cruelty to children (Section 53 of the Criminal Jurisprudence Act [720 ILCS 115/53] (formerly Ill. Rev. Stat. 1991, ch. 234, par. 2368));

26) Manufacture, delivery or trafficking of cannabis, delivery of cannabis on school grounds, or delivery to person under 18, violation by person under 18 (Sections 5, 5.1, 5.2, 7, and 9 of the Cannabis Control Act [720 ILCS 550/5, 5.1 and 9] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 705, 705.1, 705.2, 707, and 709)); or

27) Manufacture, delivery or trafficking of controlled substances (Sections 401, 401.1, 404, 405, 405.1, 407 and 407.1 of the Illinois Controlled Substance Act [720 ILCS 570/401, 401.1, 404, 405, 405.1, 407 and 407.1] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 1401, 1401.1, 1404, 1405, 1405.1, 1407, and 1407.1)).

b) The facility shall not knowingly employ or retain any individual after January-17--1997, in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) ¶67 of this Section unless the applicant, employee or employer obtains a waiver pursuant to subsections (k) and (m) of this Section. (Section 25 of the Health Care Worker Background Check Act)

c) For the purpose of this Section:

1) "Applicant" means an individual seeking employment with a facility who has received a bona fide conditional offer of employment.

2) "Conditional offer of employment" means a bona fide offer of employment by a facility to an applicant, which is contingent upon the receipt of a report from the Department of State Police indicating that the applicant does not have a record of conviction of any of the criminal offenses listed in subsections (a)(1) to (27) ¶67 of this Section.

3) "Direct care" means the provision of nursing care or assistance with meals, dressing, movement, bathing, or other personal needs or maintenance, or general supervision and oversight of the physical and mental well-being of an individual who is incapable of managing his or her person whether or not a guardian has been appointed for that individual.

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4) "Initiate" means the obtaining of the authorization for a record check from a student, applicant, or employee. (Section 15 of the Health Care Worker Background Check Act)

d) Beginning January 1, 1996, when the facility makes a conditional offer of employment to an applicant who is not exempt under subsection (q) of this Section, for a position with duties that involve direct care for residents, the employer must initiate or have initiated on its behalf a Uniform Conviction Information Act (UCIA) criminal history record check for that applicant. (Section 30(c) of the Health Care Worker Background Check Act) If the applicant is on the Department's Nurse Aide Registry in good standing and has had a UCIA criminal history record check within the last 12 months, the employer need not initiate another check.

e) The facility shall transmit all necessary information and fees to the Illinois State Police within 10 working days after receipt of the authorization. (Section 15 of the Health Care Worker Background Check Act)

f) The facility may accept an authentic UCIA criminal history record check that has been conducted within the last 12 months rather than initiating a check as required in subsection (d) of this Section.

g) The request for a UCIA criminal history record check shall be made as prescribed by the Department of State Police. The applicant or employee must be notified of the following whenever a non-fingerprint UCIA criminal history record check is made:

1) That the facility shall request or have requested on its behalf a non-fingerprint-based UCIA criminal history record check pursuant to the Health Care Worker Background Check Act.

2) That the applicant or employee has a right to obtain a copy of the criminal records report, challenge the accuracy and completeness of the report, and request a waiver in accordance with subsection (k) of this Section.

3) That the applicant, if hired conditionally, may be terminated if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) ¶67 of this Section unless the applicant's identity is validated and it is determined that the applicant or employee does not have a disqualifying criminal history record based on a fingerprint-based records check pursuant to subsection (i) of this Section.

4) That the applicant, if not hired conditionally, shall not be hired if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) ¶67 of this Section unless the applicant's record is cleared based on a fingerprint-based records check pursuant to subsection (i) of this Section.

5) That the employee may be terminated if the criminal records



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report indicates that the employee has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) ¶167 of this Section unless the employee's record is cleared based on a fingerprint-based records check pursuant to subsection (i) of this Section. (Section 30(e) and (f) of the Health Care Worker Background Check Act)

- h) A facility may conditionally employ an applicant to provide direct care for up to three months pending the results of a UCIA criminal history record check. (Section 30(g) of the Health Care Worker Background Check Act)
- i) An applicant or employee whose non-fingerprint-based UCIA criminal history record check indicates a conviction for committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) ¶167 of this Section may request that the facility or its designee commence a fingerprint-based UCIA criminal records check by submitting any necessary fees and information in a form and manner prescribed by the Department of State Police. (Section 35 of the Health Care Worker Background Check Act)
- j) A facility having actual knowledge that an employee has been convicted of committing or attempting to commit one of the offenses enumerated in Section 25 of the Act must initiate a fingerprint-based background check within 10 working days after acquiring that knowledge. The facility may continue to employ that individual in a direct care position, may reassign that individual to a non-direct care position, or may suspend the individual until the results of the fingerprint-based background check are received. (Section 30(d) of the Health Care Worker Background Check Act)
- k) An applicant, employee or employer may request a waiver to subsection (a) or (b) of this Section by submitting the following to the Department within five working days after the receipt of the criminal records report:
  - 1) A completed fingerprint-based UCIA criminal records check form (Section 40(a) of the Health Care Worker Background Check Act) (which the Department will forward to the Illinois State Police); and
  - 2) A certified check, money order or facility check made payable to the Department of State Police for the amount of money necessary to initiate a fingerprint-based UCIA criminal records check.
- l) The Department may accept the results of the fingerprint-based UCIA criminal records check instead of the items required by subsections (k)(1) and (2) above.
- m) The Department may grant a waiver based on mitigating circumstances, which may include:
  - 1) The age at which the crime was committed;
  - 2) The circumstances surrounding the crime;
  - 3) The length of time since the conviction;
  - 4) The applicant's or employee's criminal history since the conviction;

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- 5) The applicant's or employee's work history;
- 6) The applicant's or employee's current employment references;
- 7) The applicant's or employee's character references;
- 8) Nurse Aide Registry records; and
- 9) Other evidence demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents. (Section 40(b) of the Health Care Worker Background Check Act)
- n) An individual may not be employed in a direct care position during the pendency of a waiver request. (Section 10(d) of the Health Care Worker Background Check Act)
- o) A facility is not obligated to employ or offer permanent employment to an applicant, or to retain an employee who is granted a waiver. (Section 40(f) of the Health Care Worker Background Check Act)
- p) A facility may retain the individual in a direct care position if the individual presents clear and convincing evidence to the facility that the non-fingerprint-based criminal records report is invalid and if there is a good faith belief on the part of the employer that the individual did not commit an offense listed in subsections (a)(1) to (27) ¶167 of this Section, pending positive verification through a fingerprint-based criminal records check. Such evidence may include, but not be limited to:
  - 1) certified court records;
  - 2) written verification from the State's Attorney's office that prosecuted the conviction at issue;
  - 3) written verification of employment during the time period during which the crime was committed or during the incarceration period stated in the report;
  - 4) a signed affidavit from the individual concerning the validity of the report; or
  - 5) documentation from a local law enforcement agency that the individual was not convicted of a disqualifying crime.
- q) This Section shall not apply to:
  - 1) An individual who is licensed by the Department of Professional Regulation or the Department of Public Health under another law of this State;
  - 2) An individual employed or retained by a health care employer for whom a criminal background check is required by another law of this State; or
  - 3) A student in a licensed health care field including, but not limited to, a student nurse, a physical therapy student, or a respiratory care student unless he or she is employed by a health care employer in a position with duties involving direct care for residents. (Section 20 of the Health Care Worker Background Check Act)
- r) An employer need not initiate an additional criminal background check for an employee if the employer initiated a criminal background check

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for the employee after January 1, 1996 and prior to January 1, 1998. This subsection applies only to persons employed prior to January 1, 1998. Any person newly employed on or after January 1, 1998 must receive a background check as required by Section 30 of the Health Care Worker Background Check Act. (Section 25.1 of the Health Care Worker Background Check Act)

s)† The facility shall send a copy of the results of the UCIA criminal history record check to the State Nurse Aide Registry for those individuals who are on the Registry. (Section 30(b) of the Health Care Worker Background Check Act) The facility shall include the individual's Social Security number on the criminal history record check results.

t)† The facility shall retain on file for a period of 5 years records of criminal records requests for all employees. The facility shall retain the results of the UCIA criminal history records check and waiver, if appropriate, for the duration of the individual's employment. The files shall be subject to inspection by the Department. A fine of \$500 shall be imposed for failure to maintain these records. (Section 50 of the Health Care Worker Background Check Act)

u)† The facility shall maintain a copy of the employee's criminal history record check results and waiver, if applicable, in the personnel file or other secure location accessible to the Department.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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1) Heading of the Part: Hospital Licensing Requirements

2) Code Citation: 77 Ill. Adm. Code 250

3) Section Numbers: Proposed Action:  
250.310 Amendments  
250.435

4) Statutory Authority: Hospital Licensing Act [210 ILCS 85]

5) A Complete Description of the Subjects and Issues Involved:

This rulemaking implements legislation enacted in 1997. Section 250.310 is being amended in response to P.A. 90-149 (effective January 1, 1998), which amended the Hospital Licensing Act to add a definition of "privilege" for the purpose of determining medical staff privileges under Section 10.4 of the Act.

Section 250.435 is being amended to add disqualifying crimes under the Health Care Worker Background Check Act, pursuant to P.A. 90-441 (effective January 1, 1998). Additional new statutory language states that an employer need not initiate an additional criminal background check for an employee for whom a background check was initiated between January 1, 1996, and January 1, 1998.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

The Department anticipates adoption of this rulemaking approximately six to nine months after publication of the notice in the *Illinois Register*.

6) Will this Rulemaking Replace an Emergency Rule Currently in Effect? No

7) Does this Rulemaking Contain an Automatic Repeal Date? No

8) Does this Rulemaking Contain Any Incorporations By Reference? No

9) Are there any other Proposed Amendments Pending on this Part? Yes

Section Numbers	Proposed Action	Illinois Register Citation
250.1305	Amendments	21 Ill. Reg. 13264
250.1320	Amendments	21 Ill. Reg. 13264
250.1520	Amendments	21 Ill. Reg. 13264
250.2140	Amendments	21 Ill. Reg. 13264

10) Statement of Statewide Policy Objectives: This rulemaking does not create

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or expand a State Mandate.

- 11) Time, place, and Manner in which Interested Persons May Comment on this Rulemaking: Interested persons may present their comments concerning these rules by writing within 45 days after this issue of the *Illinois Register* to:

Ms. Gail M. DeVito  
Division of Legal Services  
Illinois Department of Public Health  
535 West Jefferson, Fifth Floor  
Springfield, IL 62761  
217/782-2043  
E-mail: [rules@idph.state.il.us](mailto:rules@idph.state.il.us)

These rules may have an impact on small businesses. In accordance with Sections 1-75 and 5-30 of the Illinois Administrative Procedure Act, any small business may present their comments in writing to Gail M. DeVito at the above address.

Any small business (as defined in Section 1-75 of the Illinois Administrative Procedure Act) commenting on these rules shall indicate their status as such, in writing, in their comments.

- 12) Initial Regulatory Flexibility Analysis:

A) Type of Small Businesses, Small Municipalities and Not-for-Profit Corporations Affected: Hospitals

B) Reporting, Bookkeeping or Other Procedures Required for Compliance:  
None

C) Types of Professional Skills Necessary for Compliance: Professional skills necessary to operate a hospital

- 13) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because: This rulemaking implements legislation that was passed after the publication of the Department's most recent Regulatory Agenda

The full text of the Proposed Amendments begins on the next page:

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TITLE 77: PUBLIC HEALTH  
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH  
SUBCHAPTER b: HOSPITALS AND AMBULATORY CARE FACILITIES  
PART 250  
HOSPITAL LICENSING REQUIREMENTS

SUBPART A: GENERAL

Section	
250.110	Application for and Issuance of Permit to Establish a Hospital
250.120	Application for and Issuance of a License to Operate a Hospital
250.130	Administration by the Department
250.140	Hearings
250.150	Definitions
250.160	Incorporated and Referenced Materials

SUBPART B: ADMINISTRATION AND PLANNING

Section	
250.210	The Governing Board
250.220	Accounting
250.230	Planning
250.240	Admission and Discharge
250.250	Visiting Rules
250.260	Patients' Rights
250.265	Language Assistance Services
250.270	Manuals of Procedure
250.280	Agreement with Designated Organ Procurement Agencies

SUBPART C: THE MEDICAL STAFF

Section	
250.310	Organization
250.315	House Staff Members
250.320	Admission and Supervision of Patients
250.330	Orders for Medications and Treatments
250.340	Availability for Emergencies

SUBPART D: PERSONNEL SERVICE

Section	
250.410	Organization
250.420	Personnel Records
250.430	Duty Assignments
250.435	Health Care Worker Background Check
250.440	Education Programs
250.450	Personnel Health Requirements



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250.460	Benefits
Section	
250.510	Laboratory Services
250.520	Blood and Blood Components
250.525	Designated Blood Donor Program
250.530	Proficiency Survey Program (Repealed)
250.540	Laboratory Personnel (Repealed)
250.550	Western Blot Assay Testing Procedures (Repealed)
Section	
250.610	General Diagnostic Procedures and Treatments
250.620	Radioactive Isotopes
250.630	General Policies and Procedures Manual

## SUBPART F: RADIOLOGICAL SERVICES

## SUBPART G: GENERAL HOSPITAL EMERGENCY SERVICE

Section	
250.710	Classification of Emergency Services
250.720	General Requirements
250.725	Notification of Emergency Personnel
250.730	Community or Area-wide Planning
250.740	Disaster and Mass Casualty Program
250.750	Emergency Services for Sexual Assault Victims

## SUBPART H: RESTORATIVE AND REHABILITATION SERVICES

Section	
250.810	Applicability of Other Parts of These Requirements
250.820	General
250.830	Classifications of Restorative and Rehabilitation Services
250.840	General Requirements for all Classifications
250.850	Specific Requirements for Comprehensive Physical Rehabilitation Services
250.860	Medical Direction
250.870	Nursing Care
250.880	Additional Allied Health Services

## SUBPART I: NURSING SERVICE AND ADMINISTRATION

Section	
250.910	Nursing Services
250.920	Organizational Plan
250.930	Role in hospital planning

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250.940	Job descriptions
250.950	Nursing committees
250.960	Specialized nursing services
250.970	Nursing Care Plans
250.980	Nursing Records and Reports
250.990	Unusual Incidents
250.1000	Meetings
250.1010	Education Programs
250.1020	Licensure
250.1030	Policies and Procedures
250.1040	Patient Care Units
250.1050	Equipment for Bedside Care
250.1060	Drug Services on Patient Unit
250.1070	Care of Patients
250.1080	Admission Procedures Affecting Care
250.1090	Sterilization and Processing of Supplies
250.1100	Infection Control

## SUBPART J: SURGICAL AND RECOVERY ROOM SERVICES

Section	
250.1210	Surgery
250.1220	Surgery Staff
250.1230	Policies & Procedures
250.1240	Surgical Privileges
250.1250	Surgical Emergency Care
250.1260	Operating Room Register
250.1270	Surgical Patients
250.1280	Equipment
250.1290	Safety
250.1300	Operating Room
250.1305	Visitors in Operating Room
250.1310	Cleaning of Operating Room
250.1320	Regulations for Postoperative Recovery Facilities

## SUBPART K: ANESTHESIA SERVICES

Section	
250.1410	Anesthesia Service

## SUBPART L: RECORDS AND REPORTS

Section	
250.1510	Medical Records
250.1520	Reports

## SUBPART M: FOOD SERVICE

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Section  
 250.1610 Dietary Department Administration  
 250.1620 Facilities  
 250.1630 Menus and Nutritional Adequacy  
 250.1640 Diet Orders  
 250.1650 Frequency of Meals  
 250.1660 Therapeutic (Modified) Diets  
 250.1670 Food Preparation and Service  
 250.1680 Sanitation

## SUBPART N: HOUSEKEEPING AND LAUNDRY SERVICES

Section  
 250.1710 Housekeeping  
 250.1720 Garbage, Refuse and Solid Waste Handling and Disposal  
 250.1730 Insect and Rodent Control  
 250.1740 Laundry Service  
 250.1750 Soiled Linen  
 250.1760 Clean Linen

## SUBPART O: MATERNITY AND NEONATAL SERVICE

Section  
 250.1810 Applicability of other parts of these regulations  
 250.1820 Maternity and Neonatal Service (Perinatal Service)  
 250.1830 General Requirements for all Maternity Departments  
 250.1840 Discharge of Newborn Infants from Hospital  
 250.1850 Rooming-In Care of Mother and Infant  
 250.1860 Special Programs  
 250.1870 Single Room Maternity Care

## SUBPART P: ENGINEERING AND MAINTENANCE OF THE PHYSICAL

PLANT, SITE, EQUIPMENT, AND SYSTEMS--HEATING,  
 COOLING, ELECTRICAL, VENTILATION, PLUMBING,  
 WATER, SEWER, AND SOLID WASTE DISPOSAL

Section  
 250.1910 Maintenance  
 250.1920 Emergency electric service  
 250.1930 Water Supply  
 250.1940 Ventilation, Heating, Air Conditioning, and Air Changing Systems  
 250.1950 Grounds and Buildings Shall be Maintained  
 250.1960 Sewage, Garbage, Solid Waste Handling and Disposal  
 250.1970 Plumbing  
 250.1980 Fire and Safety

## SUBPART Q: CHRONIC DISEASE HOSPITALS

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Section  
 250.2010 Definition  
 250.2020 Requirements

SUBPART R: PHARMACY OR DRUG AND MEDICINE SERVICE

Section  
 250.2110 Service Requirements  
 250.2120 Personnel Required  
 250.2130 Facilities for Services  
 250.2140 Pharmacy and Therapeutics Committee

## SUBPART S: PSYCHIATRIC SERVICES

Section  
 250.2210 Applicability of other Parts of these Regulations  
 250.2220 Establishment of a Psychiatric Service  
 250.2230 The Medical Staff  
 250.2240 Nursing Service  
 250.2250 Allied Health Personnel  
 250.2260 Staff and Personnel Development and Training  
 250.2270 Admission, Transfer and Discharge Procedures  
 250.2280 Care of Patients  
 250.2290 Special Medical Record Requirements for Psychiatric Hospitals and Psychiatric Units of General Hospitals or General Hospitals Providing Psychiatric Care  
 250.2300 Diagnostic, Treatment and Physical Facilities and Services

## SUBPART T: DESIGN AND CONSTRUCTION STANDARDS

Section  
 250.2410 Applicability of these Standards  
 250.2420 Submission of Plans for New Construction, Alterations or Additions to Existing Facility  
 250.2430 Preparation of Drawings and Specifications -- Submission Requirements  
 250.2440 General Hospital Standards  
 250.2450 Details  
 250.2460 Finishes  
 250.2470 Structural  
 250.2480 Mechanical  
 250.2490 Plumbing and Other Piping Systems  
 250.2500 Electrical Requirements

## SUBPART U: CONSTRUCTION STANDARDS FOR EXISTING HOSPITALS

Section  
 250.2610 Applicability of these Standards

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250.2620 Codes and Standards  
250.2630 Existing General Hospital Standards  
250.2640 Details  
250.2650 Finishes  
250.2660 Mechanical  
250.2670 Plumbing and Other Piping Systems  
250.2680 Electrical Requirements

## SUBPART V: SPECIAL CARE AND SPECIAL SERVICE UNITS

Section  
250.2710 Special Care and/or Special Service Units  
250.2720 Day Care for Mildly Ill Children

## SUBPART W: ALCOHOLISM AND INTOXICATION TREATMENT SERVICES

Section  
250.2810 Applicability of Other Parts of These Requirements  
250.2820 Establishment of an Alcoholism and Intoxication Treatment Service  
250.2830 Classification and Definitions of Service and Programs  
250.2840 General Requirements for all Hospital Alcoholism Program Classifications  
250.2850 The Medical and Professional Staff  
250.2860 Medical Records  
250.2870 Referral  
250.2880 Client Legal and Human Rights

ILLUSTRATION A Seismic Zone Map  
APPENDIX A Codes and Standards (Repealed)  
EXHIBIT A Codes (Repealed)  
EXHIBIT B Standards (Repealed)  
EXHIBIT C Addresses of Sources (Repealed)  
TABLE A Measurements Essential for Level I, II, III Hospitals  
TABLE B Sound Transmission Limitations in General Hospitals  
TABLE C Filter Efficiencies for Central Ventilation and Air Conditioning Systems in General Hospitals (Repealed)  
TABLE D General Pressure Relationships and Ventilation of Certain Hospital Areas (Repealed)  
TABLE E Piping Locations for Oxygen, Vacuum and Medical Compressed Air  
TABLE F General Pressure Relationships and Ventilation of Certain Hospital Areas  
TABLE G Insulation/Building Perimeter

AUTHORITY: Implementing and authorized by the Hospital Licensing Act [210 ILCS 85].

SOURCE: Rules repealed and new rules adopted August 27, 1978; emergency amendment at 2 Ill. Reg. 31, p. 73, effective July 24, 1978, for a maximum of

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150 days; amended at 2 Ill. Reg. 21, p. 49, effective May 16, 1978; emergency amendment at 2 Ill. Reg. 31, p. 73, effective July 24, 1978, for a maximum of 150 days; amended at 2 Ill. Reg. 45, p. 85, effective November 6, 1978; amended at 3 Ill. Reg. 17, p. 88, effective April 22, 1979; amended at 4 Ill. Reg. 22, p. 233, effective May 20, 1980; amended at 4 Ill. Reg. 25, p. 138, effective June 6, 1980; amended at 5 Ill. Reg. 507, effective December 29, 1980; amended at 6 Ill. Reg. 575, effective December 30, 1981; amended at 6 Ill. Reg. 1655, effective January 27, 1982; amended at 6 Ill. Reg. 3296, effective March 15, 1982; amended at 6 Ill. Reg. 7835 and 7838, effective June 17, 1982; amended at 7 Ill. Reg. 962, effective January 6, 1983; amended at 7 Ill. Reg. 5218 and 5221, effective April 4, 1983 and April 5, 1983; amended at 7 Ill. Reg. 6964, effective May 17, 1983; amended at 7 Ill. Reg. 8546, effective July 12, 1983; amended at 7 Ill. Reg. 9610, effective August 2, 1983; codified at 8 Ill. Reg. 19752; amended at 8 Ill. Reg. 24148, effective November 29, 1984; amended at 9 Ill. Reg. 4802, effective April 1, 1985; amended at 10 Ill. Reg. 11931, effective September 1, 1986; amended at 11 Ill. Reg. 10283, effective July 1, 1987; amended at 11 Ill. Reg. 10642, effective July 1, 1987; amended at 12 Ill. Reg. 15080, effective October 1, 1988; amended at 12 Ill. Reg. 16760, effective October 1, 1988; amended at 13 Ill. Reg. 13232, effective September 1, 1989; amended at 14 Ill. Reg. 2342, effective February 15, 1990; amended at 14 Ill. Reg. 13824, effective September 1, 1990; amended at 15 Ill. Reg. 5328, effective May 1, 1991; amended at 15 Ill. Reg. 13811, effective October 1, 1991; amended at 17 Ill. Reg. 1614, effective January 25, 1993; amended at 17 Ill. Reg. 17225, effective October 1, 1993; amended at 18 Ill. Reg. 11945, effective July 22, 1994; amended at 18 Ill. Reg. 15390, effective October 10, 1994; amended at 19 Ill. Reg. 13355, effective September 15, 1995; emergency amendment at 20 Ill. Reg. 474, effective January 1, 1996, for a maximum of 150 days; emergency expired on May 29, 1996; amended at 20 Ill. Reg. 3234, effective February 15, 1996; amended at 20 Ill. Reg. 10009, effective July 15, 1996; amended at 22 Ill. Reg. 3932, effective February 13, 1998; amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART C: THE MEDICAL STAFF

## Section 250.310 Organization

- a) The medical staff shall be organized in accordance with written bylaws, rules and regulations, approved by the Governing Board. The bylaws, rules and regulations shall specifically provide but not be limited to:
- 1) establishing written procedures relating to the acceptance and processing of initial applications for medical staff membership, granting and denying of medical staff reappointment, and medical staff membership or clinical privileges disciplinary matters in accordance with subsection (b) of this Section for county hospitals as defined in subsection (c) of Section 15-1 of the Illinois Public Aid Code [305 ILCS 5/15-1], or subsection (c) of this Section for all other hospitals. The procedures for initial



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applicants at any particular hospital may differ from those for current medical staff members. However, the procedures at any particular hospital shall be applied equally to each practitioner eligible for medical staff membership under Section 250.150 (Medical Staff) of this Part. The procedures shall provide that, prior to the granting of any medical staff privileges to an applicant, or renewing a current medical staff member's privileges, the hospital shall request of the director of the Department of Professional Regulation information concerning the licensee's status and any disciplinary action taken against the applicant's or medical staff member's license. This provision shall not apply to medical personnel who enter a hospital to obtain organs and tissues for transplant from a deceased donor in accordance with the Uniform Anatomical Gift Act [775 ILCS 59]. (Section 10.4 of the Act);

- 2) identifying divisions and departments as are warranted (as a minimum, active and consulting divisions are required);
- 3) identifying officers as are warranted;
- 4) establishing committees as are warranted to assure the responsibility for such functions as pharmacy and therapeutics, infection control, utilization review, patient care evaluation, and the maintenance of complete medical records;
- 5) assuring that active medical staff meetings are held regularly, and that written minutes of all meetings are kept;
- 6) reviewing and analyzing the clinical experience of the hospital at regular intervals -- the medical records of patients to be the basis for such review and analysis;
- 7) identifying conditions or situations which require consultation, including consultation between medical staff members in complicated cases;
- 8) examining of tissue removed during operations by a qualified pathologist and requiring that the findings are made a part of the patient's medical record;
- 9) keeping completed medical records;
- 10) maintaining a Utilization Review Plan which shall be in accordance with the Conditions of Participation for Hospitals in the Medicare Program;
- 11) establishing Medical Care Evaluation Studies;
- 12) establishing policies requiring a physician as first assistant to major and/or hazardous surgery, including written criteria to determine when an assistant is necessary;
- 13) assuring, through credentialing by the medical staff, that a qualified surgical assistant, whether a physician or non-physician, assists the operating surgeon in the operating room;
- 14) determining additional privileges that may be granted a staff member for the use of his/her employed allied health personnel in the hospital in accordance with policies and procedures

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recommended by the medical staff and approved by the governing authority. The policies and procedures shall include at least requirements that the staff member requesting this additional privilege shall submit for review and approval by the medical staff and the governing authority of the hospital:

- A) a curriculum vitae of the identified allied health personnel, and
  - B) a written protocol with a description of the duties, assignments and/or functions, including a description of the manner of performance within the hospital by the allied health personnel in relationship with other hospital staff;
  - 15) establishing a mechanism for assisting medical staff members in addressing physical and mental health problems;
  - 16) implementing a procedure for preserving medical staff credentialing files in the event of the closure of the hospital.
- b) The medical staff bylaws for county hospitals as defined in subsection (c) of Section 15-1 of the Illinois Public Aid Code shall include at least the following:
- 1) The procedures relating to evaluating individuals for staff membership, whether the practitioners are or are not currently members of the medical staff, shall include procedures for determination of qualifications and privileges, criteria for evaluation of qualifications, and procedures requiring information about current health status, current license status in Illinois, and biennial review of renewed license.
  - 2) The procedure shall grant to current medical staff members at least: written notice of an adverse decision by the Governing Board; an explanation and reasons for an adverse decision; the right to examine and/or present copies of relevant information, if any, related to an adverse decision; an opportunity to appeal an adverse decision; and written notice of the decision resulting from the appeal. The procedures for providing written notice shall include timeframes for giving such notice.
  - c) The medical staff bylaws for all hospitals except county hospitals shall include at least the following provisions for granting, limiting, renewing, or denying medical staff membership and clinical staff privileges: (Section 10.4(b) of the Act)
- 1) Minimum procedures for initial applicants for medical staff membership shall include the following:
    - A) Written procedures relating to the acceptance and processing of initial applicants for medical staff membership.
    - B) Written procedures to be followed in determining an applicant's qualifications for being granted medical staff membership and privileges.
    - C) Written criteria to be followed in evaluating an applicant's qualifications.
    - D) An evaluation of an applicant's current health status and current license status in Illinois.

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- E) A written response to each applicant that explains the reason or reasons for any adverse decision (including all reasons based in whole or in part on the applicant's medical qualifications or any other basis, including economic factors). (Section 10.4(b) of the Act)
- 2) Minimum procedures with respect to medical staff and clinical privilege determinations concerning current members of the medical staff shall include the following:

- A) A written explanation of the reasons for an adverse decision including all reasons based on the quality of medical care or any other basis, including economic factors.
- B) A statement of the medical staff member's right to request a fair hearing on the adverse decision before a hearing panel whose membership is mutually agreed upon by the medical staff and the Hospital Governing Board. The hearing panel shall have independent authority to recommend action to the Hospital Governing Board. Upon the request of the medical staff member or the Hospital Governing Board, the hearing panel shall make findings concerning the nature of each basis for any adverse decision recommended to and accepted by the Hospital Governing Board.

- i) Nothing in subsection (c)(3)(C) of this Section limits a hospital's or medical staff's right to summarily suspend, without a prior hearing, a person's medical staff membership or clinical privileges if the continuation of practice of a medical staff member constitutes an immediate danger to the public, including patients, visitors, and hospital employees and staff. A fair hearing shall be commenced within 15 days after the suspension and completed without delay.

- ii) Nothing in subsection (c)(3)(C) of this Section limits a medical staff's right to permit, in the medical staff bylaws, summary suspension of membership or clinical privileges in designated administrative circumstances as specifically approved by the medical staff. This bylaw provision must specifically describe both the administrative circumstance that can result in a summary suspension and the length of the summary suspension. The opportunity for a fair hearing is required for any administrative summary suspension. Any requested hearing must be commenced with 15 days after the summary suspension and completed without delay. Adverse decisions other than suspension or other restrictions on the treatment or admission of patients may be imposed summarily and without a hearing under designated administrative circumstances as specifically provided for in the

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- iii) *medical staff bylaws as approved by the medical staff.* If a hospital exercises its option to enter into an exclusive contract and that contract results in the total or partial termination or reduction of medical staff membership or clinical privileges of a current medical staff member, the hospital shall provide the affected medical staff member 60 days prior notice of the effect on his or her medical staff membership or privileges. An affected medical staff member desiring a hearing under subsection (c)(2)(B) of this Section must request the hearing within 14 days after the date he or she is so notified. The requested hearing shall be commenced and completed (with a report and recommendation to the affected medical staff member, Hospital Governing Board, and medical staff) within 30 days after the date of the medical staff member's request. If agreed upon by both the medical staff and the Hospital Governing Board, the medical staff bylaws may provide for longer time periods.

- C) A statement of the member's right to inspect all pertinent information in the hospital's possession with respect to the decision.
- D) A statement of the member's right to present witnesses and other evidence at the hearing on the decision.
- E) A written notice and written explanation of the decision resulting from the hearings.
- F) A written notice of a final adverse decision by the Hospital Governing Board.
- G) Notice given 15 days before implementation of an adverse medical staff membership or clinical privileges decision based substantially on economic factors. This notice shall be given after the medical staff member exhausts all applicable procedures under subsection (c)(2)(B)(iii) of this Section, and under the medical staff bylaws in order to allow sufficient time for the orderly provision of patient care.
- H) Nothing in subsection (c)(2) of this Section limits a medical staff member's right to waive, in writing, the rights provided in subsection (c)(2)(A)-(G) of this Section upon being granted the written exclusive right to provide particular services at a hospital, either individually or as a member of a group. If an exclusive contract is signed by a representative of a group of physicians, a waiver contained in the contract shall apply to all members of the group unless stated otherwise in the contract. (Section 10.4(b) of the Act)
- 3) Every adverse medical staff membership and clinical privilege decision based substantially on economic factors shall be

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reported to the Hospital Licensing Board before the decision takes effect. The reports shall not be disclosed in any form that reveals the identity of any hospital or physician. These reports shall be utilized to study the effects that hospital medical staff membership and clinical privilege decisions based upon economic factors have on access to care and the availability of physician services. (Section 10.4(b) of the Act)

- d) Regardless of any other categories (divisions of the medical staff) having privileges in the hospital, there shall be an active staff which must include physicians and may also include podiatrists and dentists, properly organized, which perform all the organizational duties pertaining to the medical staff. These duties include:

1) Maintenance of the proper quality of all medical care and treatment of inpatients and outpatients in the hospital. Proper quality of medical care and treatment includes:

- A) availability and use of accurate diagnostic testing for the types of patients admitted;
- B) availability and use of medical, surgical, and psychiatric treatment for patients admitted;
- C) availability and use of consultation, diagnostic tools and treatment modalities for the care of patients admitted, including the care needed for complications which may be expected to occur;

D) availability and performance of auxiliary and associate staff with documented training and experience in diagnostic and treatment modalities in use by the medical staff and documented training and experience in managing complications which may be expected to occur.

- 2) Organization of the medical staff, including adoption of rules and regulations for its government (which require the approval of the governing body), election of its officers or recommendations to the governing body for appointment of the officers, and recommendations to the governing body upon all appointments to the staff and grants of hospital privileges.

3) Other recommendations to the governing body regarding matters within the purview of the medical staff.

- e) The medical staff may include one or more divisions in addition to the active staff, but this in no way modifies the duties and responsibilities of the active staff.

f) For the purpose of this Section only:

- 1) Adverse decision means a decision reducing, restricting, suspending, revoking, denying, or not renewing medical staff membership or clinical privileges. (Section 10.4(b) of the Act)
- 2) Economic factor means any information or reasons for decisions unrelated to quality of care or professional competency. (Section 10.4(b) of the Act)
- 3) Privilege means permission to provide medical or other patient care services and permission to use hospital resources, including

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equipment, facilities and personnel that are necessary to effectively provide medical or other patient care services. This definition shall not be construed to require a hospital to acquire additional equipment, facilities, or personnel to accommodate the granting of privileges. (Section 10.4(b) of the Act)

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART D: PERSONNEL SERVICE

## Section 250.435 Health Care Worker Background Check

- a) The hospital shall not knowingly hire any individual after January 1, 1997, in a position with duties involving direct care for patients if that person has been convicted of committing or attempting to commit one or more of the following offenses (Section 25 of the Health Care Worker Background Check Act [225 ILCS 46/25]):

1) Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1 and 8-1.2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 8-1.1 and 8-1.2));

2) Murder, homicide, manslaughter or concealment of a homicidal death (Sections 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2 and 9-3.3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3); Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 3, 236, 358, 360, 361, 362, 363, 364, 364a, 365, 370, 373, 373a, 417 and 474);

3) Kidnapping or child abduction (Sections 10-1, 10-2, 10-5 and 10-7 of the Criminal Code of 1961 [720 ILCS 5/10-1, 10-2, 10-5, and 10-7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-1, 10-2, 10-5, and 10-7); Ill. Rev. Stat. 1985, ch. 38, par. 10-6; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 384 to 386);

4) Unlawful restraint or forcible detention (Sections 10-3, 10-3.1, and 10-4 of the Criminal Code of 1961 [720 ILCS 5/10-3, 10-3.1, and 10-4] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-3, 10-3.1, and 10-4); Ill. Rev. Stat. 1961, ch. 38, pars. Sections 252, 252.1, and 252.4);

5) Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography (Sections 11-6, 11-9.1, 11-19.2, and 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-6, 11-9.1, 11-19.2, and 11-20.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-6, 11-19.2, and 11-20.1; Ill. Rev. Stat. 1983, ch. 38, par. 11-20a; Ill. Rev. Stat. 1961, ch. 38, pars. 103 and 104));



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- 6)44 Assault, battery, heinous battery, tampering with food, drugs or cosmetics, or infliction of great bodily harm (Sections 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7 of the Criminal Code of 1961 [720 ILCS 5/12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7] (formerly Ill. Rev. Stat. 1961, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7); Ill. Rev. Stat. 1961, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7; Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 55, 56, and 56a to 60b);
- 7) Aggravated stalking (Section 12-7.4 of the Criminal Code of 1961 [720 ILCS 5/12-7.4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-7.4));
- 8) Home invasion (Section 12-11 of the Criminal Code of 1961 [720 ILCS 5/12-11] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-11));
- 9)54 Sexual assault or sexual abuse (Sections 12-13, 12-14, 12-14.1, 12-15, and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-13, 12-14, 12-14.1, 12-15, and 12-16] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-1, 11-2, 11-3, 11-4, 11-5, 12-13, 12-14, 12-15, and 12-16; Ill. Rev. Stat. 1985, ch. 38, pars. 11-1, 11-4, and 11-4.1; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 109, 141, 142, 490, and 491));
- 10)64 Abuse or gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-19));
- 11)74 Criminal neglect of an elderly or disabled person (Section 12-21 of the Criminal Code of 1961 [720 ILCS 5/12-21] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-21));
- 12) Endangering the life or health of a child (Section 12-21.6 of the Criminal Code of 1961 [720 ILCS 5/12-21.6] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354; Ill. Rev. Stat. 1961, ch. 38, par. 95));
- 13) Ritual mutilation, ritualized abuse of a child (Sections 12-32 and 12-33 of the Criminal Code of 1961 [720 ILCS 5/12-32 and 12-33] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-32 and 12-33));
- 14)84 Theft, retail theft (Sections 16-1 and 16A-3 of the Criminal Code of 1961 [720 ILCS 5/16-1 and 16A-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 16-1 and 16A-3; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 62, 207 to 218, 240 to 244, 246, 253, 254.1, 258, 262, 262a, 273, 290, 291, 301a, 354, 387 to 388b, 389, 393 to 400, 404a to 404c, 438, 492 to 496));
- 15)94 Financial exploitation of an elderly or disabled person (Section 16-1.3 of the Criminal Code of 1961 [720 ILCS 5/16-1.3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 16-1.3));
- 16) Forgery (Section 17-3 of the Criminal Code of 1961 [720 ILCS 5/17-3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 17-3; Ill.

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- Rev. Stat. 1961, ch. 38, pars. 151 and 277 to 286));
- 17)147 Robbery, armed robbery (Sections 18-1 and 18-2 of the Criminal Code of 1961 [720 ILCS 5/18-1 and 18-2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 18-1 and 18-2));
- 18) Vehicular hijacking, aggravated vehicular hijacking, aggravated robbery (Sections 18-3, 18-4, and 18-5 of the Criminal Code of 1961 [720 ILCS 5/18-3, 18-4, and 18-5]);
- 19)147 Burglary, residential burglary (Sections 19-1 and 19-3 of the Criminal Code of 1961 [720 ILCS 5/19-1 and 19-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 19-1 and 19-3; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 84 to 86, 88 and 501));
- 20)147 Criminal trespass to a residence (Section 19-4 of the Criminal Code of 1961 [720 ILCS 5/19-4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 19-4));
- 21)147 Arson (Sections 20-1 and 20-1.1 of the Criminal Code of 1961 [720 ILCS 5/20-1 and 20-1.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 20-1 and 20-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 48 to 53 and 236 to 238));
- 22)147 Unlawful use of weapons or aggravated discharge of a firearm (Sections 24-1 and 24-1.2 of the Criminal Code of 1961 [720 ILCS 5/24-1 and 24-1.2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 24-1 and 24-1.2; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 152, 152a, 155, 155a to 158b, 414a to 414c, 414e and 414g));
- 23) Armed violence - elements of the offense (Section 33A-2 of the Criminal Code of 1961 [720 ILCS 5/33A-2] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 33A-2));
- 24) Those provided in Section 4 of the Wrongs to Children Act (Section 4 of the Wrongs to Children Act [720 ILCS 150/4] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354));
- 25) Cruelty to children (Section 53 of the Criminal Jurisprudence Act [720 ILCS 15/53] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2368));
- 26)147 Manufacture, delivery or trafficking of cannabis, delivery of cannabis on school grounds, or delivery to person under 18; violation by person under 18 (Sections 5, 5.1, 5.2, 7, and 9 of the Cannabis Control Act [720 ILCS 550/5, 5.1, 5.2, 7, and 9] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 705, 705.1, 705.2, 707, and 709)); or
- 27)147 Manufacture, delivery or trafficking of controlled substances (Sections 401, 401.1, 404, 405, 405.1, 407 and 407.1 of the Illinois Controlled Substance Act [720 ILCS 570/401, 401.1, 404, 405, 405.1, 407 and 407.1] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 1401, 1401.1, 1404, 1405, 1405.1, 1407, and 1407.1)).
- b) The hospital shall not knowingly employ or retain any individual after January 17, 1997, in a position with duties involving direct care for patients if that person has been convicted of committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section unless the applicant, employee, or employer

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obtains a waiver pursuant to subsections (k) and (m) of this Section. (Section 25 of the Health Care Worker Background Check Act)

c) For the purpose of this Section:

- 1) "Applicant" means an individual seeking employment with a hospital who has received a bona fide conditional offer of employment.
- 2) "Conditional offer of employment" means a bona fide offer of employment by a hospital to an applicant, which is contingent upon the receipt of a report from the Department of State Police indicating that the applicant does not have a record of conviction of any of the criminal offenses listed in subsections (a)(1) to (27) ¶16 of this Section.
- 3) "Direct Care" means the provision of nursing care or assistance with meals, dressing, movement, bathing, or other personal needs or maintenance, or general supervision and oversight of the physical and mental well-being of an individual who is incapable of managing his or her person whether or not a guardian has been appointed for that individual.
- 4) "Initiate" means the obtaining of the authorization for a record check from a student, applicant, or employee. (Section 15 of the Health Care Worker Background Check Act)

d) Beginning January 1, 1996, when the hospital makes a conditional offer of employment to an applicant who is not exempt under subsection (q) of this Section, for a position with duties that involve direct care for patients, the employer must initiate or have initiated on its behalf a Uniform Conviction Information Act (UCIA) criminal history record check for that applicant. (Section 30(c) of the Health Care Worker Background Check Act) If the applicant is on the Department's Nurse Aide Registry in good standing and has had a UCIA criminal history record check within the last 12 months, the employer need not initiate another check.

e) The hospital shall transmit all necessary information and fees to the Illinois State Police within 10 working days after receipt of the authorization. (Section 15 of the Health Care Worker Background Check Act)

f) The hospital may accept an authentic UCIA criminal history record check that has been conducted within the last 12 months rather than initiating a check as required in subsection (d) of this Section.

g) The request for a UCIA criminal history record check shall be made as prescribed by the Department of State Police. The applicant or employee must be notified of the following whenever a non-fingerprint UCIA criminal history record check is made:

- 1) That the hospital shall request or have requested on its behalf a non-fingerprint-based UCIA criminal history record check pursuant to the Health Care Worker Background Check Act.
- 2) That the applicant or employee has a right to obtain a copy of the criminal records report, challenge the accuracy and completeness of the report, and request a waiver in accordance

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with subsection (k) of this Section.

3) That the applicant, if hired conditionally, may be terminated if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) ¶16 of this Section unless the applicant's identity is validated and it is determined that the applicant or employee does not have a disqualifying criminal history record based on a fingerprint-based records check pursuant to subsection (i) of this Section.

4) That the applicant, if not hired conditionally, shall not be hired if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) ¶16 of this Section unless the applicant's record is cleared based on a fingerprint-based records check pursuant to subsection (i) of this Section.

5) That the employee may be terminated if the criminal records report indicates that the employee has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) ¶16 of this Section unless the employee's record is cleared based on a fingerprint-based records check pursuant to subsection (i) of this Section. (Section 30(e) and (f) of the Health Care Worker Background Check Act)

h) A hospital may conditionally employ an applicant to provide direct care for up to three months pending the results of a UCIA criminal history record check. (Section 30(g) of the Health Care Worker Background Check Act)

i) An applicant or employee whose non-fingerprint-based UCIA criminal history record check indicates a conviction for committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) ¶16 of this Section may request that the hospital or its designee commence a fingerprint-based UCIA criminal records check by submitting any necessary fees and information in a form and manner prescribed by the Department of State Police. (Section 35 of the Health Care Worker Background Check Act)

j) A hospital having actual knowledge that an employee has been convicted of committing or attempting to commit one of the offenses enumerated in Section 25 of the Act must initiate a fingerprint-based background check within 10 working days after acquiring that knowledge. The hospital may continue to employ that individual in a direct care position, may reassign that individual to a non-direct care position, or may suspend the individual until the results of the fingerprint-based background check are received. (Section 30(d) of the Health Care Worker Background Check Act)

k) An applicant, employee or employer may request a waiver to subsection (a) or (b) of this Section by submitting the following to the Department within five working days after the receipt of the criminal



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## records report:

- 1) A completed fingerprint-based UCIA criminal records check form (Section 40(a) of the Health Care Worker Background Check Act) (which the Department will forward to the Illinois State Police); and
  - 2) A certified check, money order or hospital check made payable to the Department of State Police for the amount of money necessary to initiate a fingerprint-based UCIA criminal records check.
- 1) The Department may accept the results of the fingerprint-based UCIA Criminal Records Check instead of the items required by subsections (k)(1) and (2) above. (Section 40(a-5) of the Health Care Worker Background Check Act)
- m) The Department may grant a waiver based on mitigating circumstances, which may include:
- 1) The age at which the crime was committed;
  - 2) The circumstances surrounding the crime;
  - 3) The length of time since the conviction;
  - 4) The applicant's or employee's criminal history since the conviction;
  - 5) The applicant's or employee's work history;
  - 6) The applicant's or employee's current employment references;
  - 7) The applicant's or employee's character references;
  - 8) Nurse Aide Registry records; and
  - 9) Other evidence demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of patients. (Section 40(b) of the Health Care Worker Background Check Act)
- n) An individual may not be employed in a direct care position during the pendency of a waiver request. (Section 10(d) of the Health Care Worker Background Check Act)
- o) A hospital is not obligated to employ or offer permanent employment to an applicant, or to retain an employee who is granted a waiver. (Section 40(f) of the Health Care Worker Background Check Act)
- p) A hospital may retain the individual in a direct care position if the individual presents clear and convincing evidence to the hospital that the non-fingerprint-based criminal records report is invalid and if there is a good faith belief on the part of the employer that the individual did not commit an offense listed in subsections (a)(1) to (27) of this Section, pending positive verification through a fingerprint-based criminal records check. Such evidence may include, but not be limited to:
- 1) certified court records;
  - 2) written verification from the State's Attorney's office that prosecuted the conviction at issue;
  - 3) written verification of employment during the time period during which the crime was committed or during the incarceration period stated in the report;

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- 4) a signed affidavit from the individual concerning the validity of the report; or
  - 5) documentation from a local law enforcement agency that the individual was not convicted of a disqualifying crime.
- q) This Section shall not apply to:
- 1) An individual who is licensed by the Department of Professional Regulation or the Department of Public Health under another law of this State;
  - 2) An individual employed or retained by a health care employer for whom a criminal background check is required by another law of this State; or
  - 3) A student in a licensed health care field including, but not limited to, a student nurse, a physical therapy student, or a respiratory care student unless he or she is employed by a health care employer in a position with duties involving direct care for patients. (Section 20 of the Health Care Worker Background Check Act)
- r) An employer need not initiate an additional criminal background check for an employee if the employer initiated a criminal background check for the employee after January 1, 1996 and prior to January 1, 1998. This subsection applies only to persons employed prior to January 1, 1998. Any person newly employed on or after January 1, 1998 must receive a background check as required by Section 30 of the Health Care Worker Background Check Act. (Section 25.1 of the Health Care Worker Background Check Act)
- s) The hospital shall send a copy of the results of the UCIA criminal history record check to the State Nurse Aide Registry for those individuals who are on the Registry. (Section 30(b) of the Health Care Worker Background Check Act) The hospital shall include the individual's Social Security number on the criminal history record check results.
- t) The hospital shall retain on file for a period of 5 years records of criminal records requests for all employees. The hospital shall retain the results of the UCIA criminal history records check and waiver, if appropriate, for the duration of the individual's employment. The files shall be subject to inspection by the Department. A fine of \$500 shall be imposed for failure to maintain these records. (Section 50 of the Health Care Worker Background Check Act)
- u) The hospital shall maintain a copy of the employee's criminal history record check results and waiver, if applicable, in the personnel file or other secure location accessible to the Department.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)



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1) Heading of the Part: Illinois Home Health Agency Code

2) Code Citation: 77 Ill. Adm. Code 245

3) Section Numbers: 245.72  
Proposed Action:  
Amendments

4) Statutory Authority: Home Health Agency Licensing Act [210 ILCS 55]

5) A Complete Description of the Subjects and Issues Involved: This rulemaking implements P.A. 90-441 (effective January 1, 1998), which amended the Health Care Worker Background Check Act. New disqualifying crimes are added in Section 245.72. Additional new statutory language states that an employer need not initiate an additional criminal background check for an employee for whom a background check was initiated between January 1, 1996, and January 1, 1998.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

The Department anticipates adoption of this rulemaking approximately six to nine months after publication of the notice in the *Illinois Register*.

6) Will this Rulemaking Replace an Emergency Rule Currently in Effect? No

7) Does this Rulemaking Contain an Automatic Repeal Date? No

8) Does this Rulemaking Contain Any Incorporations By Reference? No

9) Are there any other Proposed Amendments Pending on this Part? No

10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State Mandate.

11) Time, Place, and Manner in which Interested Persons May Comment on this Rulemaking: Interested persons may present their comments concerning these rules by writing, within 45 days after this issue of the *Illinois Register*, to:

Ms. Gail M. DeVito  
Division of Legal Services  
Illinois Department of Public Health  
535 West Jefferson, Fifth Floor  
Springfield, IL 62761  
217/782-2043  
E-mail: rules@idph.state.il.us

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These rules may have an impact on small businesses. In accordance with Sections 1-75 and 5-30 of the Illinois Administrative Procedure Act, any small business may present their comments in writing to Gail M. DeVito at the above address.

Any small business (as defined in Section 1-75 of the Illinois Administrative Procedure Act) commenting on these rules shall indicate their status as such, in writing, in their comments.

12) Initial Regulatory Flexibility Analysis:

A) Type of Small Businesses, Small Municipalities and Not-for-Profit Corporations Affected: Home health agencies

B) Reporting, Bookkeeping or Other Procedures Required for Compliance: None

C) Types of Professional Skills Necessary for Compliance: Professional skills necessary to operate a home health agency.

13) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because: This rulemaking implements legislation that was passed after the publication of the Department's most recent Regulatory Agenda.

The full text of the Proposed Amendments begins on the next page:

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NOTICE OF PROPOSED AMENDMENTS

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TITLE 77: PUBLIC HEALTH

CHAPTER I: DEPARTMENT OF PUBLIC HEALTH

SUBCHAPTER b: HOSPITALS AND AMBULATORY CARE FACILITIES

PART 245

ILLINOIS HOME HEALTH AGENCY CODE

SUBPART A: GENERAL PROVISIONS

Ill. Reg. 2382, effective February 15, 1990; amended at 15 Ill. Reg. 5376, effective May 1, 1991; amended at 18 Ill. Reg. 2414, effective January 22, 1994; emergency amendments at 20 Ill. Reg. 488, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 3273, effective February 15, 1996; amended at 20 Ill. Reg. 10033, effective July 15, 1996; amended at 22 Ill. Reg. 3948, effective February 13, 1998; amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART B: OPERATIONAL REQUIREMENTS

SUBPART B: OPERATIONAL REQUIREMENTS

Section 245.72 Health Care Worker Background Check

Section 245.72 Health Care Worker Background Check

a) The agency shall not knowingly hire any individual after January 17, 1996, in a position with duties involving direct care for patients if that person has been convicted of committing or attempting to commit one or more of the following offenses (Section 25 of the Health Care Worker Background Check Act [225 ILCS 46/25]):

1) Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1 and 8-1.2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 8-1.1 and 8-1.2)).

2) Murder, homicide, manslaughter or concealment of a homicidal death (Sections 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2 and 9-3.3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2 and 9-3.3; Ill. Rev. Stat. 1985; ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 3, 236, 358, 360, 361, 362, 363, 364, 364a, 365, 370, 373, 373a, 417, and 474)).

3) Kidnaping or child abduction (Sections 10-1, 10-2, 10-5 and 10-7 of the Criminal Code of 1961 [720 ILCS 5/10-1, 10-2, 10-5, and 10-7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-1, 10-2, 10-5, and 10-7; Ill. Rev. Stat. 1985, ch. 38, par. 10-6; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 384 to 386)).

4) Unlawful restraint or forcible detention (Sections 10-3, 10-3.1, and 10-4 of the Criminal Code of 1961 [720 ILCS 5/10-3, 10-3.1, and 10-4] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-3, 10-3.1, and 10-4; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 252, 252.1, and 252.4)).

5) Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography (Sections 11-6, 11-9.1, 11-19.2, and 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-6, 11-9.1, 11-19.2, and 11-20.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-6, 11-19.2 and 11-20.1; Ill. Rev. Stat. 1983, ch. 38, par. 11-20a; Ill. Rev. Stat. 1961, ch. 38, pars. 103 and 104)).

6) Assault, battery, heinous battery, tampering with food, drugs or cosmetics, or infliction of great bodily harm (Sections 12-1,

Section

245.10 Purpose

245.20 Definitions

245.25 Incorporated and Referenced Materials

Section

245.30 Organization and Administration

245.40 Staffing and Staff Responsibilities

245.50 Services

245.60 Annual Financial Statement

245.70 Home Health Aide Training

245.72 Health Care Worker Background Check

SUBPART C: LICENSURE PROCEDURES

SUBPART C: LICENSURE PROCEDURES

Section

245.80 Licensure Required

245.90 License Application

245.100 Provisional License

245.110 Inspections and Investigations

245.120 Violations

245.130 Adverse Licensure Actions

245.140 Penalties and Fines

245.150 Hearings

AUTHORITY: Implementing and authorized by the Home Health Agency Licensing Act [210 ILCS 55].

SOURCE: Adopted at 2 Ill. Reg. 31, p. 77, effective August 2, 1978; emergency amendment at 3 Ill. Reg. 38, p. 314, effective September 7, 1979, for a maximum of 150 days; amended at 3 Ill. Reg. 40, p. 153, effective October 6, 1979; emergency amendment at 4 Ill. Reg. 18, p. 129, effective April 21, 1980, for a maximum of 150 days; amended at 4 Ill. Reg. 40, p. 56, effective September 23, 1980; emergency amendment at 6 Ill. Reg. 5855, effective April 28, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 11006, effective August 30, 1982; amended at 7 Ill. Reg. 13665, effective October 4, 1983; codified at 8 Ill. Reg. 16829; amended at 9 Ill. Reg. 4836, effective April 1, 1985; amended at 14

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12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7 of the Criminal Code of 1961 [720 ILCS 5/12-1, 12-2, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7; Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 55, 56, and 56a to 60b));

7) Aggravated stalking (Section 12-7.4 of the Criminal Code of 1961 [720 ILCS 5/12-7.4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-7.4));

8) Home invasion (Section 12-11 of the Criminal Code of 1961 [720 ILCS 5/12-11] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-11));

9) Sexual assault or sexual abuse (Sections 12-13, 12-14, 12-14.1, 12-15, and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-13, 12-14, 12-14.1, 12-15, and 12-16] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-1, 11-2, 11-3, 11-4, 11-5, 12-13, 12-14, 12-15, and 12-16; Ill. Rev. Stat. 1985, ch. 38, pars. 11-1, 11-4, and 11-4.1; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 109, 141, 142, 490, and 491));

10) Abuse or gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-19));

11) Criminal neglect of an elderly or disabled person (Section 12-21 of the Criminal Code of 1961 [720 ILCS 5/12-21] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-21));

12) Endangering the life or health of a child (Section 12-21.6 of the Criminal Code of 1961 [720 ILCS 5/12-21.6] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354; Ill. Rev. Stat. 1961, ch. 38, par. 95));

13) Ritual mutilation, ritualized abuse of a child (Sections 12-32 and 12-33 of the Criminal Code of 1961 [720 ILCS 5/12-32 and 12-33] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-32 and 12-33));

14) Theft, retail theft (Sections 16-1 and 16A-3 of the Criminal Code of 1961 [720 ILCS 5/16-1 and 16A-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 16-1 and 16A-3; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 62, 207 to 218, 240 to 244, 246, 253, 254.1, 258, 262, 262a, 273, 290, 291, 301a, 354, 387 to 388b, 389, 393 to 400, 404a to 404c, 438, 492 to 496));

15) Financial exploitation of an elderly or disabled person (Section 16-1.3 of the Criminal Code of 1961 [720 ILCS 5/16-1.3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 16-1.3));

16) Forgery (Section 17-3 of the Criminal Code of 1961 [720 ILCS 5/17-3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 17-3; Ill. Rev. Stat. 1961, ch. 38, pars. 151 and 277 to 286));

17) Robbery, armed robbery (Sections 18-1 and 18-2 of the Criminal

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Code of 1961 [720 ILCS 5/18-1 and 18-2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 18-1 and 18-2));

18) Vehicular hijacking, aggravated vehicular hijacking, aggravated robbery (Sections 18-3, 18-4, and 18-5 of the Criminal Code of 1961 [720 ILCS 5/18-3, 18-4, and 18-5]);

19) Burglary, residential burglary (Sections 19-1 and 19-3 of the Criminal Code of 1961 [720 ILCS 5/19-1 and 19-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 19-1 and 19-3; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 84 to 86, 88 and 501));

20) Criminal trespass to a residence (Section 19-4 of the Criminal Code of 1961 [720 ILCS 5/19-4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 19-4));

21) Arson (Sections 20-1 and 20-1.1 of the Criminal Code of 1961 [720 ILCS 5/20-1 and 20-1.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 20-1 and 20-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 48 to 53 and 236 to 238));

22) Unlawful use of weapons, or aggravated discharge of a firearm, or reckless discharge of a firearm (Sections 24-1, and 24-1.2, and 24-1.5 of the Criminal Code of 1961 [720 ILCS 5/24-1, and 24-1.2, and 24-1.5] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 24-1 and 24-1.2; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 152, 152a, 155, 155a to 158b, 414a to 414c, 414e and 414g));

23) Armed violence - elements of the offense (Section 33A-2 of the Criminal Code of 1961 [720 ILCS 5/33A-2] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 33A to 2));

24) Those provided in Section 4 of the Wrongs to Children Act (Section 4 of the Wrongs to Children Act [720 ILCS 150/4] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354));

25) Cruelty to children (Section 53 of the Criminal Jurisprudence Act [720 ILCS 5/53] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2368));

26) Manufacture, delivery or trafficking of cannabis, delivery of cannabis on school grounds, or delivery to person under 18, violation by person under 18 (Sections 5, 5.1, 5.2, 7, and 9 of the Cannabis Control Act [720 ILCS 550/5, 5.1, 5.2, 7, and 9] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 705, 705.1, 705.2, 707 and 709)); or

27) Manufacture, delivery or trafficking of controlled substances (Sections 401, 401.1, 404, 405, 405.1, 407 and 407.1 of the Illinois Controlled Substances Act [720 ILCS 570/401, 401.1, 404, 405, 405.1, 407 and 407.1] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 1401, 1401.1, 1404, 1405, 1405.1, 1407, and 1407.1)).

b) The agency shall not knowingly employ or retain any individual after January 17, 1997, in a position with duties involving direct care for patients if that person has been convicted of committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section unless the applicant, employee or employer obtains a waiver pursuant to subsections (k) and (m) of this Section.



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(Section 25 of the Health Care Worker Background Check Act)

c) For the purpose of this Section:

- 1) "Applicant" means an individual seeking employment with an agency who has received a bona fide conditional offer of employment.
- 2) "Conditional offer of employment" means a bona fide offer of employment by an agency to an applicant, which is contingent upon the receipt of a report from the Department of State Police indicating that the applicant does not have a record of conviction of any of the criminal offenses listed in subsections (a)(1) to (27) ¶16 of this Section.
- 3) "Direct care" means the provision of nursing care or assistance with meals, dressing, movement, bathing, or other personal needs or maintenance, or general supervision and oversight of the physical and mental well-being of an individual who is incapable of managing his or her person whether or not a guardian has been appointed for that individual.

4) "Initiate" means the obtaining of the authorization for a record check from a student, applicant, or employee. (Section 15 of the Health Care Worker Background Check Act)

d) Beginning January 1, 1996, when the agency makes a conditional offer of employment to an applicant who is not exempt under subsection (q) of this Section, for a position with duties that involve direct care for patients, the employer must initiate or have initiated on its behalf a Uniform Conviction Information Act (UCIA) criminal history record check for that applicant. (Section 30(c) of the Health Care Worker Background Check Act) If the applicant is on the Department's Nurse Aide Registry in good standing and has had a UCIA criminal history record check within the last 12 months, the employer need not initiate another check.

e) The facility shall transmit all necessary information and fees to the Illinois State Police within 10 working days after receipt of the authorization. (Section 15 of the Health Care Worker Background Check Act)

f) The agency may accept an authentic UCIA criminal history record check that has been conducted within the last 12 months rather than initiating a check as required in subsection (d) of this Section.

g) The request for a UCIA criminal history record check shall be made as prescribed by the Department of State Police. The applicant or employee must be notified of the following whenever a non-fingerprint UCIA criminal history record check is made:

- 1) That the agency shall request or have requested on its behalf a non-fingerprint-based UCIA criminal history record check pursuant to the Health Care Worker Background Check Act.
- 2) That the applicant or employee has a right to obtain a copy of the criminal records report, challenge the accuracy and completeness of the report, and request a waiver in accordance with subsection (k) of this Section.
- 3) That the applicant, if hired conditionally, may be terminated if

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the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) ¶16 of this Section unless the applicant's identity is validated and it is determined that the applicant or employee does not have a disqualifying criminal history record based on a fingerprint-based records check pursuant to subsection (i) of this Section.

4) That the applicant, if not hired conditionally, shall not be hired if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) ¶16 of this Section unless the applicant's record is cleared based on a fingerprint-based records check pursuant to subsection (i) of this Section.

5) That the employee may be terminated if the criminal records report indicates that the employee has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) ¶16 of this Section unless the employee's record is cleared based on a fingerprint-based records check pursuant to subsection (i) of this Section. (Section 30(e) and (f) of the Health Care Worker Background Check Act)

h) An agency may conditionally employ an applicant to provide direct care for up to three months pending the results of a UCIA criminal history record check. (Section 30(g) of the Health Care Worker Background Check Act)

i) An applicant or employee whose non-fingerprint-based UCIA criminal history record check indicates a conviction for committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) ¶16 of this Section may request that the agency or its designee or the Department commence a fingerprint-based UCIA criminal records check by submitting any necessary fees and information in a form and manner prescribed by the Department of State Police. (Section 35 of the Health Care Worker Background Check Act)

j) An Agency having actual knowledge that an employee has been convicted of committing or attempting to commit one of the offenses enumerated in Section 25 of the Act must initiate a fingerprint-based background check within 10 working days after acquiring that knowledge. The agency may continue to employ that individual in a direct care position, may reassign that individual to a non-direct care position, or may suspend the individual until the results of the fingerprint-based background check are received. (Section 30(d) of the Health Care Worker Background Check Act)

k) An applicant, employee or employer may request a waiver to subsection (a) or (b) of this Section by submitting the following to the Department within five working days after the receipt of the criminal records report:

- 1) A completed fingerprint-based UCIA criminal records check form

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(Section 40(a) of the Health Care Worker Background Check Act) (which the Department will forward to the Illinois State Police); and

- 2) A certified check, money order or agency check made payable to the Department of State Police for the amount of money necessary to initiate a fingerprint-based UCIA criminal records check.

1) The Department may accept the results of the fingerprint-based UCIA criminal records check instead of the items required by subsections (k)(1) and (2) above.

m) The Department may grant a waiver based on mitigating circumstances, which may include:

- 1) The age at which the crime was committed;
- 2) The circumstances surrounding the crime;
- 3) The length of time since the conviction;
- 4) The applicant's or employee's criminal history since the conviction;

5) The applicant's or employee's work history;

6) The applicant's or employee's current employment references;

7) The applicant's or employee's character references;

8) Nurse Aide Registry records; and

9) Other evidence demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of patients. (Section 40(b) of the Health Care Worker Background Check Act)

n) An individual may not be employed in a direct care position during the pendency of a waiver request. (Section 10(d) of the Health Care Worker Background Check Act)

o) An agency is not obligated to employ or offer permanent employment to an applicant, or to retain an employee who is granted a waiver. (Section 40(f) of the Health Care Worker Background Check Act)

p) An agency may retain the individual in a direct care position if the individual presents clear and convincing evidence to the agency that the non-fingerprint-based criminal records report is invalid and if there is a good faith belief on the part of the employer that the individual did not commit an offense listed in subsections (a)(1) to (27) ¶167 of this Section, pending positive verification through a fingerprint-based criminal records check. Such evidence may include, but not be limited to:

- 1) certified court records;
- 2) written verification from the State's Attorney's office that prosecuted the conviction at issue;
- 3) written verification of employment during the time period during which the crime was committed or during the incarceration period stated in the report;
- 4) a signed affidavit from the individual concerning the validity of the report; or
- 5) documentation from a local law enforcement agency that the

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individual was not convicted of a disqualifying crime.

q) This Section shall not apply to:

- 1) An individual who is licensed by the Department of Professional Regulation or the Department of Public Health under another law of this State;
- 2) An individual employed or retained by a health care employer for whom a criminal background check is required by another law of this State; or
- 3) A student in a licensed health care field including, but not limited to, a student nurse, a physical therapy student, or a respiratory care student unless he or she is employed by a health care employer in a position with duties involving direct care for residents. (Section 20 of the Health Care Worker Background Check Act)

r) An employer need not initiate an additional criminal background check for an employee if the employer initiated a criminal background check for the employee after January 1, 1996 and prior to January 1, 1998. This subsection applies only to persons employed prior to January 1, 1998. Any person newly employed on or after January 1, 1998 must receive a background check as required by Section 30 of the Health Care Worker Background Check Act. (Section 25.1 of the Health Care Worker Background Check Act)

s)†† The agency must send a copy of the results of the UCIA criminal history record check to the State Nurse Aide Registry for those individuals who are on the Registry. (Section 30(b) of the Health Care Worker Background Check Act) The agency shall include the individual's Social Security number on the criminal history record check results.

t)†† The agency shall retain on file for a period of 5 years records of criminal records requests for all employees. The facility shall retain the results of the UCIA criminal history records check and waiver, if appropriate, for the duration of the individual's employment. The files shall be subject to inspection by the Department. A fine of \$500 shall be imposed for failure to maintain these records. (Section 50 of the Health Care Worker Background Check Act)

u)†† The agency shall maintain a copy of the employee's criminal history record check results and waiver, if applicable, in the personnel file or other secure location accessible to the Department.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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1) Heading of the Part: Illinois Veterans' Homes Code

2) Code Citation: 77 Ill. Adm. Code 340

3) Section Numbers: Proposed Action:

340.1120 Amendments  
340.1125 New Section  
340.1310 Amendments  
340.1377 Amendments

4) Statutory Authority: Nursing Home Care Act [210 ILCS 45]

5) A Complete Description of the Subjects and Issues Involved: This rulemaking implements legislation enacted in 1997. Section 340.1120 is amended and Section 340.1125 is being added in response to P.A. 90-341 (effective January 1, 1998), which created the Alzheimer's Special Care Disclosure Act and amended the Nursing Home Care Act. A facility that has an Alzheimer's special care unit or center is required to provide information to the Department at the time of licensure renewal concerning the services offered. The information must also be provided to actual or potential clients. Section 300.620 is being amended to implement P.A. 90-366 (effective August 10, 1997), which amended the Nursing Home Care Act to require a facility to advise a prospective resident to consult a physician to determine whether the prospective resident should obtain a vaccination against pneumococcal pneumonia. Section 340.1310 is being amended to add disqualifying crimes under the Health Care Worker Background Check Act, pursuant to P.A. 90-441 (effective January 1, 1998). Additional new statutory language states that an employer need not initiate an additional criminal background check for an employee for whom a background check was initiated between January 1, 1996, and January 1, 1998.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

The Department anticipates adoption of this rulemaking approximately six to nine months after publication of the notice in the *Illinois Register*.

6) Will this Rulemaking Replace an Emergency Rule Currently in Effect? No

7) Does this Rulemaking Contain an Automatic Repeal Date? No

8) Does this Rulemaking Contain Any Incorporations By Reference? No

9) Are there any other Proposed Amendments Pending on this Part? Yes

Section Numbers Proposed Action Ill. Reg. Citation

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340.1255 New Section 21 Ill. Reg. 6704  
340.1320 Amendments 21 Ill. Reg. 6704  
340. Table A Amendments 21 Ill. Reg. 6704

10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State Mandate.

11) Time, Place, and Manner in which Interested Persons May Comment on this Rulemaking: Interested persons may present their comments concerning these rules by writing within 45 days after this issue of the *Illinois Register* to:

Ms. Gail M. DeVito  
Division of Legal Services  
Illinois Department of Public Health  
535 West Jefferson, Fifth Floor  
Springfield, Illinois 62761  
217/782-2043  
E-mail: rules@idph.state.il.us

These rules may have an impact on small businesses. In accordance with Sections 1-75 and 5-30 of the Illinois Administrative Procedure Act, any small business may present their comments in writing to Gail M. DeVito at the above address.

Any small business (as defined in Section 1-75 of the Illinois Administrative Procedure Act) commenting on these rules shall indicate their status as such, in writing, in their comments.

12) Initial Regulatory Flexibility Analysis:

A) Type of Small Businesses, Small Municipalities and Not-for-Profit Corporations Affected: None

B) Reporting, Bookkeeping or Other Procedures Required for Compliance: New reporting procedures for facilities with Alzheimer's units or centers are set forth herein.

C) Types of Professional Skills Necessary for Compliance: Professional skills necessary for the operation of a veterans' home

13) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because: This rulemaking implements legislation that was passed after the publication of the Department's most recent Regulatory Agenda

The full text of the Proposed Amendments begins on the next page:



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## NOTICE OF PROPOSED AMENDMENTS

TITLE 77: PUBLIC HEALTH  
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH  
SUBCHAPTER c: LONG-TERM CARE FACILITIES

## PART 340

## ILLINOIS VETERANS' HOMES CODE

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340.1000	Definitions
340.1010	Incorporated and Referenced Materials
340.1110	General Requirements
340.1115	Federal Veterans' Regulations
340.1120	Application for License
340.1125	Alzheimer's Special Care Disclosure
340.1130	Criteria for Adverse License Actions
340.1140	Denial of Initial License
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340.1170	Presentation of Findings by the Department
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340.1220	Determination of the Level of a Violation
340.1230	Plans of Correction and Reports of Correction
340.1240	Calculation of Penalties
340.1245	Conditions for Assessment of Penalties
340.1250	Reduction or Waiver of Penalties
340.1260	Waivers

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340.1300	Facility Policies
340.1310	Admission and Discharge Policies
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340.1340	Facility Record Requirements
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340.1376	Registry of Certified Nurse Aides
340.1377	Health Care Worker Background Check

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## SUBPART C: RESIDENT RIGHTS

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340.1400	Implementation of Resident Rights and Facility Responsibilities
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340.1420	Contract Between Resident and Facility
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340.1550	Obstetrical and Gynecological Care
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340.1610	Unnecessary, Psychotropic, and Anti psychotic Drugs
340.1620	Medication Administration
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## SUBPART E: MEDICATION ADMINISTRATION SERVICES

Section	
340.1650	Medication Policies and Procedures
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340.1700	Recreational and Activity Programs
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## 340.1720 Work Programs

## SUBPART G: RESIDENT RECORDS

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340.1800 Resident Record Requirements  
340.1810 Content of Medical Record  
340.1820 Records Pertaining to Resident's Property  
340.1830 Retention, Transfer, and Inspection of Records  
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## SUBPART H: FOOD SERVICE

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340.1900 Food Service Staff  
340.1910 Diet Orders  
340.1920 Adequacy of Diet and Meal Pattern  
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340.1940 Menu Planning  
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SUBPART I: PHYSICAL PLANT SERVICES,  
FURNISHINGS, EQUIPMENT AND SUPPLIES

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340.2000 Maintenance  
340.2010 Water Supply, Sewage Disposal and Plumbing  
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340.2030 Laundry Services  
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340.2050 Equipment and Supplies  
TABLE A Disaster Preparedness Parameters--Relative Humidity and Temperature  
TABLE B Guidelines for the Use of Various Drugs

AUTHORITY: Implementing and authorized by the Nursing Home Care Act [210 ILCS 45].

SOURCE: Emergency rule adopted at 18 Ill. Reg. 10391, effective June 21, 1994, for a maximum of 150 days; emergency rule expired November 18, 1994; adopted at 19 Ill. Reg. 5679, effective April 3, 1995; emergency amendments at 20 Ill. Reg. 496, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 10045, effective July 15, 1996; amended at 20 Ill. Reg. 12013, effective September 10, 1996; amended at 22 Ill. Reg. 3959, effective February 13, 1998; amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS  
SUBPART A: GENERAL PROVISIONS

## Section 340.1120 Application for License

- a) Application for a license to establish or operate a facility shall be made in writing and submitted, with other such information as the Department may require, on forms provided by the Department.
- b) The license is not transferable. It is issued to a specific licensee and for a specific location. The license and the valid current renewal certificate immediately become void and shall be returned to the Department when a new license is issued to operate the facility; or when operation is discontinued; or when operation is moved to a new location; or when the licensee (if an individual) dies; or when the licensee (if a corporation or partnership) dissolves or terminates; or when the licensee (whatever the entity) ceases to be.
- c) The Department may issue licenses or renewals for periods of not less than six ~~6~~ months nor more than ~~eighteen~~ 18 months for facilities with annual licenses and not less than 18 months nor more than 30 months for facilities with 2-year licenses in order to distribute the expiration dates of such licenses throughout the calendar year. Fees for such licenses shall be prorated on the basis of the portion of a year for which they are issued. (Section 3-110 of the Act) The prorated fee will be as follows:
- 1) Six ~~6~~ months to less than ~~twelve~~ 12 months - \$150-00;
  - 2) Twelve ~~12~~ months to ~~eighteen~~ 18 months - \$200-00;
  - 3) Eighteen ~~18~~ months to less than ~~twenty-four~~ 24 months - \$350-00;
  - 4) Twenty-four ~~24~~ months to ~~thirty~~ 30 months - \$400-00.
- d) The licensee shall qualify for issuance of a two-year license if the licensee has met the criteria contained in Section 3-110(b) of the Act for the last ~~twenty-four~~ 24 consecutive months.
- e) A renewal application shall not be approved unless the applicant has provided to the Department an accurate disclosure document in accordance with the Alzheimer's Special Care Disclosure Act and Section 340.1125 of this Part, if applicable. (Section 3-115 of the Act)

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

## Section 340.1125 Alzheimer's Special Care Disclosure

A facility that offers to provide care for persons with Alzheimer's disease through an Alzheimer's special care unit or center shall disclose to the Department or to a potential or actual client of the facility the following information in writing on request of the Department or client:

- a) The form of care or treatment that distinguishes the facility as suitable for persons with Alzheimer's disease;





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Stat. 1991, ch. 38, pars. 11-6, 11-19.2, and 11-20.1; Ill. Rev. Stat. 1983, ch. 38, par. 11-20a; Ill. Rev. Stat. 1961, ch. 38, pars. 103 and 104);

6) ~~4~~ Assault, battery, heinous battery, tampering with food, drugs or cosmetics, or infliction of great bodily harm (Sections 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7 of the Criminal Code of 1961 [720 ILCS 5/12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 55, 56, and 56a to 60b));

7) Aggravated stalking (Section 12-7.4 of the Criminal Code of 1961 [720 ILCS 5/12-7.4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-7.4));

8) Home invasion (Section 12-11 of the Criminal Code of 1961 [720 ILCS 5/12-11] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-11));

9) ~~5~~ Sexual assault or sexual abuse (Sections 12-13, 12-14, 12-14.1, 12-15, and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-13, 12-14, 12-14.1, 12-15, and 12-16] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-1, 11-2, 11-3, 11-4, 11-5, 12-13, 12-14, 12-15, and 12-16; Ill. Rev. Stat. 1985, ch. 38, pars. 11-1, 11-4, and 11-4.1; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 109, 141, 142, 490, and 491));

10) ~~6~~ Abuse or gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-19));

11) ~~7~~ Criminal neglect of an elderly or disabled person (Section 12-21 of the Criminal Code of 1961 [720 ILCS 5/12-21] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-21));

12) Endangering the life or health of a child (Section 12-21.6 of the Criminal Code of 1961 [720 ILCS 5/12-21.6] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354; Ill. Rev. Stat. 1961, ch. 38, par. 95));

13) Ritual mutilation, ritualized abuse of a child (Sections 12-32 and 12-33 of the Criminal Code of 1961 [720 ILCS 5/2-32 and 12-33] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-32 and 12-33));

14) ~~8~~ Theft, retail theft (Sections 16-1 and 16A-3 of the Criminal Code of 1961 [720 ILCS 5/16-1 and 16A-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 16-1 and 16A-3; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 62, 207 to 218, 240 to 244, 258, 262, 262a, 273, 290, 291, 301a, 354, 387 to 388b, 389, 393 to 400, 404a to 404c, 438, 492 to 496));

15) ~~9~~ Financial exploitation of an elderly or disabled person (Section 16-1.3 of the Criminal Code of 1961 [720 ILCS 5/16-1.3]

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(formerly Ill. Rev. Stat. 1991, ch. 38, par. 16-1.3));

16) Forgery (Section 17-3 of the Criminal Code of 1961 [720 ILCS 5/17-3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 17-3; Ill. Rev. Stat. 1961, ch. 38, pars. 151 and 277 to 286));

17) ~~10~~ Robbery, armed robbery (Sections 18-1 and 18-2 of the Criminal Code of 1961 [720 ILCS 5/18-1 and 18-2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 18-1 and 18-2));

18) Vehicular hijacking, aggravated vehicle hijacking, aggravated robbery (Sections 18-3, 18-4 and 18-5 of the Criminal Code of 1961 [720 ILCS 5/18-3, 18-4, and 18-5]);

19) ~~11~~ Burglary, residential burglary (Sections 19-1 and 19-3 of the Criminal Code of 1961 [720 ILCS 5/19-1 and 19-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 19-1 and 19-3; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 84 to 86, 88, and 501));

20) ~~12~~ Criminal trespass to a residence (Section 19-4 of the Criminal Code of 1961 [720 ILCS 5/19-4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 19-4));

21) ~~13~~ Arson (Sections 20-1 and 20-1.1 of the Criminal Code of 1961 [720 ILCS 5/20-1 and 20-1.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 20-1 and 20-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 48 to 53 and 236 to 238));

22) ~~14~~ Unlawful use of weapons, or aggravated discharge of a firearm, or reckless discharge of a firearm (Sections 24-1, and 24-1.2, and 24-1.5 of the Criminal Code of 1961 [720 ILCS 5/24-1, and 24-1.2, and 24-1.5] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 24-1 and 24-1.2; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 152, 152a, 155, 155a to 158b, 414a to 414c, 414e, and 414g));

23) Armed violence - elements of the offense (Section 33A-2 of the Criminal Code of 1961 [720 ILCS 5/33A-2] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 33A-2));

24) Those provided in Section 4 of the Wrongs to Children Act (Section 4 of the Wrongs to Children Act [720 ILCS 150/4] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354));

25) Cruelty to children (Section 53 of the Criminal Jurisprudence Act [720 ILCS 115/53] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2369));

26) ~~15~~ Manufacture, delivery or trafficking of cannabis, delivery of cannabis on school grounds, or delivery to person under 18; violation by person under 18 (Sections 5, 5.1, 5.2, 7, and 9 of the Cannabis Control Act [720 ILCS 550/5, 5.1, 5.2, 7, and 9] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 705, 705.1, 705.2, 707 and 709)); or

27) ~~16~~ Manufacture, delivery or trafficking of controlled substances (Sections 401, 401.1, 404, 405, 405.1, 407 and 407.1 of the Illinois Controlled Substance Act [720 ILCS 570/401, 401.1, 404, 405, 405.1, 407, 407.1] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 1401, 1401.1, 1404, 1405, 1405.1, 1407, and 1407.1));

b) The facility shall not knowingly employ or retain any individual after

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January 17, 1997, in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) ¶167 of this Section unless the applicant, employee or employer obtains a waiver pursuant to subsections (k) and (m) of this Section. (Section 25 of the Health Care Worker Background Check Act)

c) For the purpose of this Section:

- 1) "Applicant" means an individual seeking employment with a facility who has received a bona fide conditional offer of employment.
- 2) "Conditional offer of employment" means a bona fide offer of employment by a facility to an applicant, which is contingent upon the receipt of a report from the Department of State Police indicating that the applicant does not have a record of conviction of any of the criminal offenses listed in subsections (a)(1) to (27) ¶167 of this Section.

3) "Direct care" means the provision of nursing care or assistance with meals, dressing, movement, bathing, or other personal needs or maintenance, or general well-being of an individual who is incapable of managing his or her person whether or not a guardian has been appointed for that individual.

4) "Initiate" means the obtaining of the authorization for a record check from a student, applicant, or employee. (Section 15 of the Health Care Worker Background Check Act)

d) Beginning January 1, 1996, when the facility makes a conditional offer of employment to an applicant who is not exempt under subsection (q) of this Section for a position with duties that involve direct care for residents, the employer shall inquire of the Nurse Aide Registry as to the status of the applicant's Uniform Conviction Information Act (UCIA) criminal history record check. If a UCIA Criminal History Record Check has not been conducted within the last 12 months, the facility must initiate or have initiated on its behalf a UCIA criminal history record check for that applicant. (Section 30(c) of the Health Care Worker Background Check Act)

e) The facility shall transmit all necessary information and fees to the Illinois State Police within 10 working days after receipt of the authorization.

f) The facility may accept an authentic UCIA criminal history record check that has been conducted within the last 12 months rather than initiating a check as required in subsection (d) of this Section.

g) The request for a UCIA criminal history record check shall be made as prescribed by the Department of State Police. The applicant or employee must be notified of the following whenever a non-fingerprint UCIA criminal history record check is made:

- 1) That the facility shall request or have requested on its behalf a non-fingerprint-based UCIA criminal history record check pursuant to the Health Care Worker Background Check Act.
- 2) That the applicant or employee has a right to obtain a copy of

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the criminal records report, challenge the accuracy and completeness of the report, and request a waiver in accordance with subsection (k) of this Section.

3) That the applicant, if hired conditionally, may be terminated if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) ¶167 of this Section unless the applicant's identity is validated and it is determined that the applicant or employee does not have a disqualifying criminal history record based on a fingerprint-based records check pursuant to subsection (i) of this Section.

4) That the applicant, if not hired conditionally, shall not be hired if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) ¶167 of this Section unless the applicant's record is cleared based on a fingerprint-based records check pursuant to subsection (i) of this Section.

5) That the employee may be terminated if the criminal records report indicates that the employee has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) ¶167 of this Section unless the employee's record is cleared based on a fingerprint-based records check pursuant to subsection (i) of this Section. (Section 30(e) and (f) of the Health Care Worker Background Check Act)

h) A facility may conditionally employ an applicant to provide direct care for up to three months pending the results of a UCIA criminal history record check. (Section 30(g) of the Health Care Worker Background Check Act)

i) An applicant or employee whose non-fingerprint-based UCIA criminal history record check indicates a conviction for committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) ¶167 of this Section may request that the facility or its designee commence a fingerprint-based UCIA criminal records check by submitting any necessary fees and information in a form and manner prescribed by the Department of State Police. (Section 35 of the Health Care Worker Background Check Act)

j) A facility having actual knowledge that an employee has been convicted of committing or attempting to commit one of the offenses enumerated in Section 25 of the Act must initiate a fingerprint-based background check within 10 working days after acquiring that knowledge. The facility may continue to employ that individual in a direct care position, may reassign that individual to a non-direct care position, or may suspend the individual until the results of the fingerprint-based background check are received. (Section 30(d) of the Health Care Worker Background Check Act)

k) An applicant, employee or employer may request a waiver to subsections



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(a) or (b) of this Section by submitting the following to the Department within five working days after the receipt of the criminal records report:

- 1) A completed fingerprint-based UCIA criminal records check form (Section 40(a) of the Health Care Worker Background Check Act) (which the Department will forward to the Illinois State Police); and

- 2) A certified check, money order or facility check made payable to the Department of State Police for the amount of money necessary to initiate a fingerprint-based UCIA criminal records check.

- 1) The Department may accept the results of the fingerprint-based UCIA criminal records check instead of the items required by subsections (k)(1) and (2) above. (Section 40(a-5) of the Health Care Worker Background Check Act)

m) The Department may grant a waiver based on mitigating circumstances, which may include:

- 1) The age at which the crime was committed;
- 2) The circumstances surrounding the crime;
- 3) The length of time since the conviction;
- 4) The applicant's or employee's criminal history since the conviction;

- 5) The applicant's or employee's work history;

- 6) The applicant's or employee's current employment references;

- 7) The applicant's or employee's character references;

- 8) Nurse Aide Registry records; and

- 9) Other evidence demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents. (Section 40(b) of the Health Care Worker Background Check Act)

- n) An individual may not be employed in a direct care position during the pendency of a waiver request. (Section 10(d) of the Health Care Worker Background Check Act)

- o) A facility is not obligated to employ or offer permanent employment to an applicant, or to retain an employee who is granted a waiver. (Section 40(f) of the Health Care Worker Background Check Act)

- p) A facility may retain the individual in a direct care position if the individual presents clear and convincing evidence to the facility that the non-fingerprint-based criminal records report is invalid and if there is a good faith belief on the part of the employer that the individual did not commit an offense listed in subsections (a)(1) to (27) of this Section, pending positive verification through a fingerprint-based criminal records check. Such evidence may include, but not be limited to:

- 1) certified court records;
- 2) written verification from the State's Attorney's office that prosecuted the conviction at issue;
- 3) written verification of employment during the time period during

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which the crime was committed or during the incarceration period stated in the report;

- 4) a signed affidavit from the individual concerning the validity of the report; or
- 5) documentation from a local law enforcement agency that the individual was not convicted of a disqualifying crime.

q) This Section shall not apply to:

- 1) An individual who is licensed by the Department of Professional Regulation or the Department of Public Health under another law of this State;
- 2) An individual employed or retained by a health care employer for whom a criminal background check is required by another law of this State; or
- 3) A student in a licensed health care field including, but not limited to, a student nurse, a physical therapy student, or a respiratory care student unless he or she is employed by a health care employer in a position with duties involving direct care for residents. (Section 20 of the Health Care Worker Background Check Act)

- r) An employer need not initiate an additional criminal background check for an employee if the employer initiated a criminal background check for the employee after January 1, 1996 and prior to January 1, 1998. This subsection applies only to persons employed prior to January 1, 1998. Any person newly employed on or after January 1, 1998 must receive a background check as required by Section 30 of the Health Care Worker Background Check Act. (Section 25.1 of the Health Care Worker Background Check Act)

- s) The facility must send a copy of the results of the UCIA criminal history record check to the State Nurse Aide Registry for those individuals who are on the Registry. (Section 30(b) of the Health Care Worker Background Check Act) The facility shall include the individual's Social Security number on the criminal history record check results.

- t) The facility shall retain on file for a period of 5 years records of criminal records requests for all employees. The facility shall retain the results of the UCIA criminal history records check and waiver, if appropriate, for the duration of the individual's employment. The files shall be subject to inspection by the Department. A fine of \$500 shall be imposed for failure to maintain these records. (Section 50 of the Health Care Worker Background Check Act)

- u) The facility shall maintain a copy of the employee's criminal history record check results and waiver, if applicable, in the personnel file or other secure location accessible to the Department.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)



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1) Heading of the Part: Intermediate Care for the Developmentally Disabled Facilities Code

2) Code Citation: 77 Ill. Adm. Code 350

3) Section Numbers: Proposed Action:  
350.630 Amendments  
350.681 Amendments

4) Statutory Authority: Nursing Home Care Act [210 ILCS 45]

5) A Complete Description of the Subjects and Issues Involved:

This rulemaking implements legislation enacted in 1997. Section 350.630 is being amended to implement P.A. 90-366 (effective August 10, 1997), which amended the Nursing Home Care Act to require a facility to advise a prospective resident to consult a physician to determine whether the prospective resident should obtain a vaccination against pneumococcal pneumonia. Section 350.681 is being amended to add disqualifying crimes under the Health Care Worker Background Check Act, pursuant to P.A. 90-441 (effective January 1, 1998). Additional new statutory language states that an employer need not initiate an additional criminal background check for an employee for whom a background check was initiated between January 1, 1996, and January 1, 1998.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

The Department anticipates adoption of this rulemaking approximately six to nine months after publication of the notice in the *Illinois Register*.

6) Will this Rulemaking Replace an Emergency Rule Currently in Effect? No

7) Does this Rulemaking Contain an Automatic Repeal Date? No

8) Does this Rulemaking Contain Any Incorporations By Reference? No

9) Are there any other Proposed Amendments Pending on this Part? Yes

Section Numbers	Proposed Action	Illinois Register Citation
350.315	Amendments	21 Ill. Reg. 6739
350.340	Amendments	21 Ill. Reg. 15379
350.690	Amendments	21 Ill. Reg. 6739
350.2620	Amendments	21 Ill. Reg. 15379
350.3230	Repealer	21 Ill. Reg. 15379
350. Table F	Amendments	21 Ill. Reg. 6739

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10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State Mandate.

11) Time, Place, and Manner in which Interested Persons May Comment on this Rulemaking: Interested persons may present their comments concerning these rules by writing within 45 days after this issue of the *Illinois Register* to:

Ms. Gail M. DeVito  
Division of Legal Services  
Illinois Department of Public Health  
535 West Jefferson, Fifth Floor  
Springfield, IL 62761  
217/782-2043  
E-mail: rules@idph.state.il.us

These rules may have an impact on small businesses. In accordance with Sections 1-75 and 5-30 of the Illinois Administrative Procedure Act, any small business may present their comments in writing to Gail M. DeVito at the above address.

Any small business (as defined in Section 1-75 of the Illinois Administrative Procedure Act) commenting on these rules shall indicate their status as such, in writing, in their comments.

12) Initial Regulatory Flexibility Analysis:

A) Type of Small Businesses, Small Municipalities and Not-for-Profit Corporations Affected: Long-term care facilities

B) Reporting, Bookkeeping or Other Procedures Required for Compliance: None

C) Types of Professional Skills Necessary for Compliance: Professional skills necessary for the operation of a long-term care facility

13) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because: This rulemaking implements legislation that was passed after the publication of the Department's most recent Regulatory Agenda

The full text of the Proposed Amendments begins on the next page:

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TITLE 77: PUBLIC HEALTH  
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH  
SUBCHAPTER c: LONG-TERM CARE FACILITIES

## PART 350

## INTERMEDIATE CARE FOR THE DEVELOPMENTALLY DISABLED, FACILITIES CODE

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350.130	Licensee
350.140	Issuance of an Initial License for a New Facility
350.150	Issuance of an Initial License Due to a Change of Ownership
350.160	Issuance of a Renewal License
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350.170	Denial of Initial License
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350.180	Revocation of License
350.190	Experimental Program Conflicting With Requirements
350.200	Inspections, Surveys, Evaluations and Consultation
350.210	Filing an Annual Attested Financial Statement
350.220	Information to Be Made Available to the Public By the Department
350.230	Information to Be Made Available to the Public By the Licensee
350.240	Municipal Licensing
350.250	Ownership Disclosure
350.260	Issuance of Conditional Licenses
350.270	Monitor and Receivership
350.271	Presentation of Findings
350.272	Determination to Issue a Notice of Violation or Administrative Warning
350.274	Determination of the Level of a Violation
350.276	Notice of Violation
350.277	Administrative Warning
350.278	Plans of Correction
350.280	Reports of Correction
350.282	Conditions for Assessment of Penalties
350.284	Calculation of Penalties
350.286	Determination to Assess Penalties
350.288	Reduction or Waiver of Penalties
350.290	Quarterly List of Violators
350.300	Alcoholism Treatment Programs In Long-Term Care Facilities
350.310	Department May Survey Facilities Formerly Licensed
350.320	Waivers
350.330	Definitions
350.340	Incorporated and Referenced Materials

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## SUBPART C: POLICIES

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350.620	Resident Care Policies
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Section	Medication Policies and Procedures
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AUTHORITY: Implementing and authorized by the Nursing Home Care Act [210 ILCS 45].

SOURCE: Emergency rules adopted at 4 Ill. Reg. 10, p. 495, effective March 1, 1980, for a maximum of 150 days; amended at 4 Ill. Reg. 30, p. 1, effective

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July 28, 1980; amended at 5 Ill. Reg. 1657, effective February 4, 1981; amended at 6 Ill. Reg. 5981, effective May 3, 1982; amended at 6 Ill. Reg. 6453, effective May 14, 1982; amended at 6 Ill. Reg. 8196, effective June 29, 1982; amended at 6 Ill. Reg. 14544, effective November 8, 1982; amended at 6 Ill. Reg. 14675, effective November 15, 1982; amended at 6 Ill. Reg. 15556, effective December 15, 1982; amended at 7 Ill. Reg. 278, effective December 22, 1982; amended at 7 Ill. Reg. 1919 and 1945, effective January 28, 1983; amended at 7 Ill. Reg. 7963, effective July 1, 1983; amended at 7 Ill. Reg. 15817, effective November 15, 1983; amended at 7 Ill. Reg. 16984, effective December 14, 1983; amended at 8 Ill. Reg. 15574 and 15578 and 15581, effective August 15, 1984; amended at 8 Ill. Reg. 15935, effective August 17, 1984; amended at 8 Ill. Reg. 16980, effective September 5, 1984; codified at 8 Ill. Reg. 19806; amended at 8 Ill. Reg. 24214, effective November 29, 1984; amended at 8 Ill. Reg. 24680, effective December 7, 1984; amended at 9 Ill. Reg. 142, effective December 26, 1984; amended at 9 Ill. Reg. 331, effective December 28, 1984; amended at 9 Ill. Reg. 2964, effective February 25, 1985; amended at 9 Ill. Reg. 10876, effective July 1, 1985; amended at 11 Ill. Reg. 14795, effective October 1, 1987; amended at 11 Ill. Reg. 16830, effective October 1, 1987; amended at 12 Ill. Reg. 979, effective December 24, 1987; amended at 12 Ill. Reg. 16838, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18705, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 6040, effective April 17, 1989; amended at 13 Ill. Reg. 19451, effective December 1, 1989; amended at 14 Ill. Reg. 14876, effective October 1, 1990; amended at 15 Ill. Reg. 466, effective January 1, 1991; amended at 16 Ill. Reg. 594, effective January 1, 1992; amended at 16 Ill. Reg. 13910, effective September 1, 1992; amended at 17 Ill. Reg. 2351, effective February 10, 1993; emergency amendment at 17 Ill. Reg. 2373, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 7948, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; emergency amendment at 17 Ill. Reg. 9105, effective June 7, 1993, for a maximum of 150 days; emergency expired on November 4, 1993; amended at 17 Ill. Reg. 15056, effective September 3, 1993; amended at 17 Ill. Reg. 16153, effective January 1, 1994; amended at 17 Ill. Reg. 19210, effective October 26, 1993; amended at 17 Ill. Reg. 19517, effective November 4, 1993; amended at 17 Ill. Reg. 21017, effective November 20, 1993; amended at 18 Ill. Reg. 1432, effective January 14, 1994; amended at 18 Ill. Reg. 15789, effective October 15, 1994; amended at 19 Ill. Reg. 11481, effective July 29, 1995; emergency amendment at 20 Ill. Reg. 512, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 10065, effective July 15, 1996; amended at 20 Ill. Reg. 12049, effective September 10, 1996; amended at 21 Ill. Reg. 14990, effective November 15, 1997; amended at 22 Ill. Reg. 4040, effective February 13, 1998; amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

a) Residents shall only be admitted who have had a comprehensive evaluation covering physical, emotional, social and cognitive factors, conducted by an appropriately constituted interdisciplinary team.  
b) No resident determined by professional evaluation to be in need of skilled level of nursing care shall be admitted to, or kept in, an Intermediate Care Facility, or Intermediate Care Facility for the Developmentally Disabled, or any distinct part of the facility designated and classified for intermediate care for the developmentally disabled.  
c) Each facility shall have a policy concerning the admission of persons needing prenatal or maternity care, and a policy concerning the keeping of such persons who become pregnant while they are residents of the facility. If these policies permit such persons to be admitted to, or kept in the facility, then the facility shall have a policy concerning the provision of adequate and appropriate prenatal and maternity care to such individuals from in-house or outside resources.  
d) A facility for infants and children under 18 years of age shall be used exclusively for children. Persons under 18 years of age may not be cared for in a facility for adults without prior approval from the Department. Such approval will be granted only when it is the best possible placement for the person under the particular set of circumstances.  
e) A facility shall not refuse to discharge or transfer a resident when requested to do so by the resident himself or, if the resident is incompetent, by the resident's guardian.  
f) If a resident insists on being discharged and is discharged against the advice of a physician or a Qualified Mental Retardation Professional, the facts involved in the situation shall be fully documented in the resident's clinical record.  
g) No resident shall be discharged without the concurrence of the attending physician. All involuntary discharges and transfers shall be in accordance with Sections 3-401 through 3-423 of the Act.  
h) No resident shall be admitted with a communicable, contagious or infectious disease except as set forth in Section 350.1220(j) through (k).  
i) A facility shall not admit more residents than the number authorized by the license issued to it.  
j) Before a prospective resident's admission to a facility, the facility shall advise the prospective resident to consult a physician to determine whether the prospective resident should obtain a vaccination against pneumococcal pneumonia. [Section 2-213 of the Act]  
(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

Section 350.681 Health Care Worker Background Check

SUBPART C: POLICIES

a) The facility shall not knowingly hire any individual after January 1,

Section 350.630 Admission and Discharge Policies



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1996 in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the following offenses (Section 25 of the Health Care Worker Background Check Act (225 ILCS 46/25)):

- 1) Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1 and 8-1.2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 8-1.1 and 8-1.2));
- 2) Murder, homicide, manslaughter or concealment of a homicidal death (Sections 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2 and 9-3.3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2 and 9-3.3); Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 3, 236, 358, 360, 361, 362, 363, 364, 364a, 365, 370, 373, 373a, 417, and 474);
- 3) Kidnaping or child abduction (Sections 10-1, 10-2, 10-5 and 10-7 of the Criminal Code of 1961 [720 ILCS 5/10-1, 10-2, 10-5, and 10-7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-1, 10-2, 10-5, and 10-7); Ill. Rev. Stat. 1985, ch. 38, par. 10-6; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 384 to 386);
- 4) Unlawful restraint or forcible detention (Sections 10-3, 10-3.1, and 10-4 of the Criminal Code of 1961 [720 ILCS 5/10-3, 10-3.1, and 10-4] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-3, 10-3.1, and 10-4); Ill. Rev. Stat. 1961, ch. 38, pars. Sections 252, 252.1, and 252.4);
- 5) Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography (Sections 11-6, 11-9.1, 11-19.2, and 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-6, 11-9.1, 11-19.2, and 11-20.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-6, 11-19.2, and 11-20.1); Ill. Rev. Stat. 1983, ch. 38, par. 11-20a; Ill. Rev. Stat. 1961, ch. 38, pars. 103 and 104));
- 6) Assault, battery, heinous battery, tampering with food, drugs or cosmetics or infliction of great bodily harm (Sections 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7 of the Criminal Code of 1961 [720 ILCS 5/12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7); Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 55, 56, and 56a to 60b);
- 7) Aggravated stalking (Section 12-7.4 of the Criminal Code of 1961 [720 ILCS 5/12-7.4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-7.4));
- 8) Home invasion (Section 12-11 of the Criminal Code of 1961 [720 ILCS 5/12-11] (formerly Ill. Rev. Stat. 1991, ch. 38, par.

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- 12-11.1);
- 9) Sexual assault or sexual abuse (Sections 12-13, 12-14, 12-14.1, 12-15, and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-13, 12-14, 12-14.1, 12-15, and 12-16] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-1, 11-2, 11-3, 11-4, 11-5, 12-13, 12-14, 12-15, and 12-16); Ill. Rev. Stat. 1985, ch. 38, pars. 11-1, 11-4, and 11-4.1; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 109, 141, 142, 490, and 491);
- 10) Abuse or gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-19));
- 11) Criminal neglect of an elderly or disabled person (Section 12-21 of the Criminal Code of 1961 [720 ILCS 5/12-21] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-21));
- 12) Endangering the life or health of a child (Section 12-21.6 of the Criminal Code of 1961 [720 ILCS 5/12-21.6] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354; Ill. Rev. Stat. 1961, ch. 38, par. 95));
- 13) Ritual mutilation, ritualized abuse of a child (Sections 12-32 and 12-33 of the Criminal Code of 1961 [720 ILCS 5/12-32 and 12-33] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-32 and 12-33));
- 14) Theft, retail theft (Sections 16-1 and 16A-3 of the Criminal Code of 1961 [720 ILCS 5/16-1 and 16A-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 16-1 and 16A-3; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 62, 207 to 218, 240 to 244, 246, 253, 254.1, 258, 262, 262a, 273, 290, 291, 301a, 354, 387 to 388b, 389, 393 to 400, 404a to 404c, 438, 492 to 496));
- 15) Financial exploitation of an elderly or disabled person (Section 16-1.3 of the Criminal Code of 1961 [720 ILCS 5/16-1.3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 16-1.3));
- 16) Forgery (Section 17-3 of the Criminal Code of 1961 [720 ILCS 5/17-3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 17-3; Ill. Rev. Stat. 1961, ch. 38, pars. 151 and 277 to 286));
- 17) Robbery, armed robbery (Sections 18-1 and 18-2 of the Criminal Code of 1961 [720 ILCS 5/18-1 and 18-2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 18-1 and 18-2));
- 18) Vehicular hijacking, aggravated vehicular hijacking, aggravated robbery (Sections 18-3, 18-4, and 18-5 of the Criminal Code of 1961 [720 ILCS 5/18-3, 18-4, and 18-5]);
- 19) Burglary, residential burglary (Sections 19-1 and 19-3 of the Criminal Code of 1961 [720 ILCS 5/19-1 and 19-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 19-1 and 19-3); Ill. Rev. Stat. 1961, ch. 38, pars. Sections 84 to 86, 88, and 501);
- 20) Criminal trespass to a residence (Section 19-4 of the Criminal Code of 1961 [720 ILCS 5/19-4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 19-4));
- 21) Arson (Sections 20-1 and 20-1.1 of the Criminal Code of 1961



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[720 ILCS 5/20-1 and 20-1.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 20-1 and 20-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 48 to 53 and 236 to 238));

22)†4† Unlawful use of weapons, or aggravated discharge of a firearm, or reckless discharge of a firearm (Sections 24-1, and 24-1.2, and 24-1.5 of the Criminal Code of 1961 [720 ILCS 5/24-1, and 24-1.2, and 24-1.5] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 24-1 and 24-1.2; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 24-1 and 24-1.2); 155, 155a to 158b, 414a to 414c, 414e, and 414g));

23) Armed violence - elements of the offense (Section 33A-2 of the Criminal Code of 1961 [720 ILCS 5/33A-2] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 33A-2));

24) Those provided in Section 4 of the Wrongs to Children Act (Section 4 of the Wrongs to Children Act [720 ILCS 150/4] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354));

25) Cruelty to children (Section 53 of the Criminal Jurisprudence Act [720 ILCS 115/531] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2368));

26)†5† Manufacture, delivery or trafficking of cannabis, delivery of cannabis on school grounds, or delivery to person under 18; violation by person under 18 (Sections 5, 5.1, 5.2, 7, and 9 of the Cannabis Control Act [720 ILCS 550/5, 5.1, 5.2, 7, and 9] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 705, 705.1, 705.2, 707, and 709)); or

27)†6† Manufacture, delivery or trafficking of controlled substances (Sections 401, 401.1, 404, 405, 405.1, 407 and 407.1 of the Illinois Controlled Substances Act [720 ILCS 570/401, 401.1, 404, 405, 405.1, 407 and 407.1] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 1401, 1401.1, 1404, 1405, 1405.1, 1407, and 1407.1));

b) The facility shall not knowingly employ or retain any individual after January 17, 1997, in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) †6† of this Section unless the applicant, employee or employer obtains a waiver pursuant to subsections (k) and (m) of this Section. (Section 25 of the Health Care Worker Background Check Act)

c) For the purpose of this Section:

- 1) "Applicant" means an individual seeking employment with a facility who has received a bona fide conditional offer of employment.

- 2) "Conditional offer of employment" means a bona fide offer of employment by a facility to an applicant, which is contingent upon the receipt of a report from the Department of State Police indicating that the applicant does not have a record of conviction of any of the criminal offenses listed in subsections (a)(1) to (27) †6† of this Section.

- 3) "Direct care" means the provision of nursing care or assistance with meals, dressing, movement, bathing, or other personal needs

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or maintenance, or general supervision and oversight of the physical and mental well-being of an individual who is incapable of managing his or her person whether or not a guardian has been appointed for that individual.

4) "Initiate" means the obtaining of the authorization for a record check from a student, applicant, or employee. (Section 15 of the Health Care Worker Background Check Act)

d) Beginning January 1, 1996, when the facility makes a conditional offer of employment to an applicant who is not exempt under subsection (q) of this Section for a position with duties that involve direct care for residents, the employer shall inquire of the Nurse Aide Registry as to the status of the applicant's Uniform Conviction Information Act (UCIA) criminal history record check. If a UCIA criminal history record check has not been conducted within the last 12 months, the facility must initiate or have initiated on its behalf a UCIA criminal history record check for that applicant. (Section 30(c) of the Health Care Worker Background Check Act)

e) The facility shall transmit all necessary information and fees to the Illinois State Police within 10 working days after receipt of the authorization. (Section 15 of the Health Care Worker Background Check Act)

f) The facility may accept an authentic UCIA criminal history record check that has been conducted within the last 12 months rather than initiating a check as required in subsection (d) of this Section.

g) The request for a UCIA criminal history record check shall be made as prescribed by the Department of State Police. The applicant or employee must be notified of the following whenever a non-fingerprint UCIA criminal history record check is made:

- 1) That the facility shall request or have requested on its behalf a non-fingerprint-based UCIA criminal history record check pursuant to the Health Care Worker Background Check Act.

- 2) That the applicant or employee has a right to obtain a copy of the criminal records report, challenge the accuracy and completeness of the report, and request a waiver in accordance with subsection (k) of this Section.

- 3) That the applicant, if hired conditionally, may be terminated if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) †6† of this Section unless the applicant's identity is validated and it is determined that the applicant or employee does not have a disqualifying criminal history record based on a fingerprint-based records check pursuant to subsection (i) of this Section.

- 4) That the applicant, if not hired conditionally, shall not be hired if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) †6†.

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††6† of this Section unless the applicant's record is cleared based on a fingerprint-based records check pursuant to subsection (h) of this Section.

- 5) That the employee may be terminated if the criminal records report indicates that the employee has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) ††6† of this Section unless the employee's record is cleared based on a fingerprint-based records check pursuant to subsection (i) of this Section. (Section 30(e) and (f) of the Health Care Worker Background Check Act)
- h) A facility may conditionally employ an applicant to provide direct care for up to three months pending the results of a UCIA criminal history record check. (Section 30(g) of the Health Care Worker Background Check Act)
- i) An applicant or employee whose non-fingerprint-based UCIA criminal history record check indicates a conviction for committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) ††6† of this Section may request that the facility or its designee commence a fingerprint-based UCIA criminal records check by submitting any necessary fees and information in a form and manner prescribed by the Department of State Police. (Section 35 of the Health Care Worker Background Check Act)
- j) A facility having actual knowledge that an employee has been convicted of committing or attempting to commit one of the offenses enumerated in Section 25 of the Act must initiate a fingerprint-based background check within 10 working days after acquiring that knowledge. The facility may continue to employ that individual in a direct care position, may reassign that individual to a non-direct care position, or may suspend the individual until the results of the fingerprint-based background check are received. (Section 30(d) of the Health Care Worker Background Check Act)
- k) An applicant, employee or employer may request a waiver to subsection (a) or (b) of this Section by submitting the following to the Department within five working days after the receipt of the criminal records report:
  - 1) A completed fingerprint-based UCIA criminal records check form (Section 40(a) of the Health Care Worker Background Check Act) (which the Department will forward to the Department of State Police); and
  - 2) A certified check, money order or agency check made payable to the Department of State Police for the amount of money necessary to initiate a fingerprint-based UCIA criminal records check.
- l) The Department may accept the results of the fingerprint-based UCIA criminal records check instead of the items required by subsections (k)(1) and (2) above. (Section 40(a-5) of the Health Care Worker Background Check Act)
- m) The Department may grant a waiver based on mitigating circumstances, which may include:
  - 1) A completed fingerprint-based UCIA criminal records check form (Section 40(a) of the Health Care Worker Background Check Act) (which the Department will forward to the Department of State Police); and
  - 2) A certified check, money order or agency check made payable to the Department of State Police for the amount of money necessary to initiate a fingerprint-based UCIA criminal records check.

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- 1) The age at which the crime was committed;
- 2) The circumstances surrounding the crime;
- 3) The length of time since the conviction;
- 4) The applicant's or employee's criminal history since the conviction;
- 5) The applicant's or employee's work history;
- 6) The applicant's or employee's current employment references;
- 7) The applicant's or employee's character references;
- 8) Nurse Aide Registry records; and
- 9) Other evidence demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents. (Section 40(b) of the Health Care Worker Background Check Act)
- n) An individual may not be employed in a direct care position during the pendency of a waiver request. (Section 10(d) of the Health Care Worker Background Check Act)
- o) A facility is not obligated to employ or offer permanent employment to an applicant, or to retain an employee who is granted a waiver. (Section 40(f) of the Health Care Worker Background Check Act)
- p) A facility may retain the individual in a direct care position if the individual presents clear and convincing evidence to the facility that the non-fingerprint-based criminal records report is invalid and if there is a good faith belief on the part of the employer that the individual did not commit an offense listed in subsections (a)(1) to (27) ††6† of this Section, pending positive verification through a fingerprint-based criminal records check. Such evidence may include, but not be limited to:
  - 1) certified court records;
  - 2) written verification from the State's Attorney's office that prosecuted the conviction at issue;
  - 3) written verification of employment during the time period during which the crime was committed or during the incarceration period stated in the report;
  - 4) a signed affidavit from the individual concerning the validity of the report; or
  - 5) documentation from a local law enforcement agency that the individual was not convicted of a disqualifying crime.
- q) This Section shall not apply to:
  - 1) An individual who is licensed by the Department of Professional Regulation or the Department of Public Health under another law of this State;
  - 2) An individual employed or retained by a health care employer for whom a criminal background check is required by another law of this State; or
  - 3) A student in a licensed health care field including, but not limited to, a student nurse, a physical therapy student, or a respiratory care student unless he or she is employed by a health



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care employer in a position with duties involving direct care for residents. (Section 20 of the Health Care Worker Background Check Act)

r) An employer need not initiate an additional criminal background check for an employee if the employer initiated a criminal background check for the employee after January 1, 1996 and prior to January 1, 1998. This subsection applies only to persons employed prior to January 1, 1998. Any person newly employed on or after January 1, 1998 must receive a background check as required by Section 30 of the Health Care Worker Background Check Act. (Section 25.1 of the Health Care Worker Background Check Act)

s) The facility must send a copy of the results of the UCIA criminal history record check to the State Nurse Aide Registry for those individuals who are on the Registry. (Section 30(b) of the Health Care Worker Background Check Act) The facility shall include the individual's Social Security number on the criminal history record check results.

t) The facility shall retain on file for a period of 5 years records of criminal records requests for all employees. The facility shall retain the results of the criminal history records check and waiver, if appropriate, for the duration of the individual's employment. The files shall be subject to inspection by the Department. A fine of \$500 shall be imposed for failure to maintain these records. (Section 50 of the Health Care Worker Background Check Act)

u) The facility shall maintain a copy of the employee's criminal history record check results and waiver, if applicable, in the personnel file or other secure location accessible to the Department.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Long-Term Care for Under Age 22 Facilities Code

2) Code Citation: 77 Ill. Adm. Code 390

3) Section Numbers: Proposed Action:  
390.630 Amendments  
390.681 Amendments

4) Statutory Authority: Nursing Home Care Act [210 ILCS 45]

5) A Complete Description of the Subjects and Issues Involved:

Section 390.630 is being amended to implement P.A. 90-366 (effective August 10, 1997), which amended the Nursing Home Care Act to require a facility to advise a prospective resident to consult a physician to determine whether the prospective resident should obtain a vaccination against pneumococcal pneumonia. Section 390.681 is being amended to add disqualifying crimes under the Health Care Worker Background Check Act, pursuant to P.A. 90-441 (effective January 1, 1998). Additional new statutory language states that an employee need not initiate an additional criminal background check for an employee for whom a background check was initiated between January 1, 1996, and January 1, 1998.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

The Department anticipates adoption of this rulemaking approximately six to nine months after publication of the notice in the *Illinois Register*.

6) Will this Rulemaking Replace an Emergency Rule Currently in Effect? No

7) Does this Rulemaking Contain an Automatic Repeal Date? No

8) Does this Rulemaking Contain Any Incorporations By Reference? No

9) Are there any other Proposed Amendments Pending on this Part? Yes

Section Numbers	Proposed Action	Illinois Register Citation
390.315	Amendments	21 Ill. Reg. 6755
390.340	Amendments	21 Ill. Reg. 15396
390.690	Amendments	21 Ill. Reg. 6755
390.2620	Amendments	21 Ill. Reg. 15396
390.3230	Repealer	21 Ill. Reg. 15396
390. Table F	Amendments	21 Ill. Reg. 6755

10) Statement of Statewide Policy Objectives: This rulemaking does not create



DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

TITLE 77: PUBLIC HEALTH  
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH  
SUBCHAPTER C: LONG-TERM CARE FACILITIES

PART 390  
LONG-TERM CARE FOR UNDER AGE 22 FACILITIES CODE

SUBPART A: GENERAL PROVISIONS

Section	
390.110	General Requirements
390.120	Application for License
390.130	Licensee
390.140	Issuance of an Initial License for a New Facility
390.150	Issuance of an Initial License Due to a Change of Ownership
390.160	Issuance of a Renewal License
390.165	Criteria for Adverse License Actions
390.170	Denial of Initial License
390.175	Denial of Renewal of License
390.180	Revocation of License
390.190	Experimental Program Conflicting With Requirements
390.200	Inspections, Surveys, Evaluations and Consultation
390.210	Filing an Annual Attested Financial Statement
390.220	Information to be Made Available to the Public by the Department
390.230	Information to Be Made Available to the Public By the Licensee
390.240	Municipal Licensing
390.250	Ownership Disclosure
390.260	Issuance of Conditional Licenses
390.270	Monitor and Receivership
390.271	Presentation of Findings
390.272	Determination to Issue a Notice of Violation or Administrative Warning
390.274	Determination of the Level of a Violation
390.276	Notice of Violation
390.277	Administrative Warning
390.278	Plans of Correction
390.280	Reports of Correction
390.282	Conditions for Assessment of Penalties
390.284	Calculation of Penalties
390.286	Determination to Assess Penalties
390.288	Reduction or Waiver of Penalties
390.290	Quarterly List of Violators
390.300	Alcoholism Treatment Programs in Long-Term Care Facilities
390.310	Department May Survey Facilities Formerly Licensed
390.320	Waivers
390.330	Definitions
390.340	Incorporated and Referenced Materials

DEPARTMENT OF PUBLIC HEALTH  
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or expand a State Mandate.

- 11) Time, Place, and Manner in which Interested Persons May Comment on this Rulemaking: Interested persons may present their comments concerning these rules by writing within 45 days after this issue of the *Illinois Register* to:

Ms. Gail M. DeVito  
Division of Legal Services  
Illinois Department of Public Health  
535 West Jefferson, Fifth Floor  
Springfield, IL 62761  
217/782-2043  
E-mail: rules@idph.state.il.us

These rules may have an impact on small businesses. In accordance with Sections 1-75 and 5-30 of the Illinois Administrative Procedure Act, any small business may present their comments in writing to Gail M. DeVito at the above address.

Any small business (as defined in Section 1-75 of the Illinois Administrative Procedure Act) commenting on these rules shall indicate their status as such, in writing, in their comments.

- 12) Initial Regulatory Flexibility Analysis:

A) Type of Small Businesses, Small Municipalities and Not-for-Profit Corporations Affected: Long-term care facilities

B) Reporting, Bookkeeping or Other Procedures Required for Compliance:  
None

C) Types of Professional Skills Necessary for Compliance: Professional skills necessary for the operation of a long-term care facility

- 13) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because: This rulemaking implements legislation that was passed after the publication of the Department's most recent Regulatory Agenda

The full text of the Proposed Amendments begins on the next page:

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

## SUBPART B: ADMINISTRATION

Section  
390.500 Administrator

## SUBPART C: POLICIES

Section  
390.610 Management Policies  
390.620 Resident Care Policies  
390.630 Admission and Discharge Policies  
390.640 Contract Between Resident and Facility  
390.650 Residents' Advisory Council  
390.660 General Policies  
390.670 Personnel Policies  
390.675 Initial Health Evaluation for Employees  
390.680 Child Care/Habilitation Aides  
390.681 Health Care Worker Background Check  
390.683 Registry of Child Care/Habilitation Aides  
390.685 Student Interns  
390.690 Disaster Preparedness  
390.700 Serious Incidents and Accidents

## SUBPART D: PERSONNEL

Section  
390.810 General  
390.820 Categories of Personnel  
390.830 Consultation Services

## SUBPART E: HEALTH AND DEVELOPMENTAL SERVICES

Section  
390.1010 Service Programs  
390.1020 Medical Services  
390.1025 Life-Sustaining Treatments  
390.1030 Physician Services  
390.1035 Tuberculin Skin Test Procedures  
390.1040 Nursing Services  
390.1050 Dental Care Services  
390.1060 Physical and Occupational Therapy Services  
390.1070 Psychological Services  
390.1080 Social Services  
390.1090 Speech Pathology and Audiology Services  
390.1100 Recreational and Activity Services  
390.1110 Educational Services  
390.1120 Work Activity and Prevocational Training Services

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SUBPART F: RESTRAINTS AND BEHAVIOR  
MANAGEMENT

Section  
390.1310 Restraints  
390.1312 Nonemergency Use of Physical Restraints  
390.1314 Emergency Use of Physical Restraints  
390.1316 Unnecessary, Psychotropic, and Antipsychotic Drugs  
390.1320 Behavior Management  
390.1330 Behavior Emergencies (Repealed)

## SUBPART G: MEDICATIONS

Section  
390.1410 Medication Policies and Procedures  
390.1420 Conformance with Physician's Orders  
390.1430 Administration of Medication  
390.1440 Labeling and Storage of Medications  
390.1450 Control of Narcotics and Legend Drugs

## SUBPART H: RESIDENT AND FACILITY RECORDS

Section  
390.1610 Resident Record Requirements  
390.1620 Content of Medical Records  
390.1630 Confidentiality of Resident's Records  
390.1640 Records Pertaining to Residents' Property  
390.1650 Retention and Transfer of Resident Records  
390.1660 Other Resident Record Requirements  
390.1670 Staff Responsibility for Medical Records  
390.1680 Retention of Facility Records  
390.1690 Other Facility Record Requirements

## SUBPART I: FOOD SERVICE

Section  
390.1810 Director of Food Services  
390.1820 Dietary Staff in Addition to Director of Food Services  
390.1830 Hygiene of Dietary Staff  
390.1840 Diet Orders  
390.1850 Adequacy of Diet and Meal Pattern  
390.1860 Infant and Therapeutic Diets  
390.1870 Scheduling Meals  
390.1880 Menu Planning  
390.1890 Food Preparation and Service  
390.1900 Preparation of Infant Formula  
390.1910 Food Handling Sanitation  
390.1920 Kitchen Equipment, Utensils, and Supplies

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SUBPART J: MAINTENANCE, HOUSEKEEPING, AND LAUNDRY	
Section	Nursing Unit
390.2010	Play, Dining, Activity/Program Rooms
390.2020	Treatment and Personal Care
390.2030	Service Department
	General Building Requirements
	Structural
	Mechanical Systems
	Plumbing Systems
	Electrical Requirements

SUBPART K: FURNISHINGS, EQUIPMENT, AND SUPPLIES	
Section	General
390.2210	Medical and Personal Care Program
390.2220	Restraints
390.2230	Abuse and Neglect

SUBPART L: WATER SUPPLY AND SEWAGE DISPOSAL	
Section	Communication and Visitation
390.2410	Resident's Funds
390.2420	Residents' Advisory Council
390.2430	Contract With Facility
390.2440	Private Right of Action

SUBPART M: DESIGN AND CONSTRUCTION STANDARDS FOR NEW FACILITIES	
Section	Transfer or Discharge
390.2610	Applicability of these Standards
390.2620	Codes and Standards
390.2630	Preparation of Drawings and Specifications
390.2640	Site
390.2650	Administration and Public Areas
390.2660	Nursing Unit
390.2670	Dining, Play, Activity/Program Rooms
390.2680	Therapy and Personal Care
390.2690	Service Departments
390.2700	General Building Requirements
390.2710	Structural
390.2720	Mechanical Systems
390.2730	Plumbing Systems
390.2740	Electrical Systems

SUBPART N: DESIGN AND CONSTRUCTION STANDARDS FOR EXISTING FACILITIES	
Section	Infant Feeding
390.2910	Applicability
390.2920	Codes and Standards
390.2930	Preparation of Drawings and Specifications
390.2940	Site
390.2950	Administration and Public Areas

SUBPART O: RESIDENT'S RIGHTS	
Section	Daily Nutritional Requirements By Age Group
390.3210	Medical and Personal Care Program
390.3220	Restraints
390.3230	Abuse and Neglect
390.3240	Communication and Visitation
390.3250	Resident's Funds
390.3260	Residents' Advisory Council
390.3270	Contract With Facility
390.3280	Private Right of Action
390.3290	Transfer or Discharge
390.3300	Complaint Procedures
390.3310	Confidentiality
390.3320	Facility Implementation
390.3330	Day Care in Long-Term Care Facilities

SUBPART P: DAY CARE PROGRAMS	
Section	Interpretation and Illustrative Services for Long-Term Care Facility for Residents Under 22 Years of Age
390.3510	Forms for Day Care in Long-Term Care Facilities
APPENDIX A	
Interpretation and Illustrative Services for Long-Term Care Facility for Residents Under 22 Years of Age	
APPENDIX B	
Forms for Day Care in Long-Term Care Facilities	
APPENDIX C	
Guidelines for the Use of Various Drugs	
TABLE A	
Infant Feeding	
TABLE B	
Daily Nutritional Requirements By Age Group	
TABLE C	
Sound Transmissions Limitations	
TABLE D	
Pressure Relationships and Ventilation Rates of Certain Areas for New Long-Term Care Facilities for Persons Under Twenty-Two (22) Years of Age	
TABLE E	
Sprinkler Requirements	
TABLE F	
Disaster Preparedness Parameters - Relative Humidity and Temperature	

AUTHORITY: Implementing and authorized by the Nursing Home Care Act [210 ILCS 45].



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**SOURCE:** Adopted at 6 Ill. Reg. 1658, effective February 1, 1982; emergency amendment at 6 Ill. Reg. 3223, effective March 8, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 11622, effective September 14, 1982; amended at 6 Ill. Reg. 14557 and 14560, effective November 8, 1982; amended at 6 Ill. Reg. 14678, effective November 15, 1982; amended at 7 Ill. Reg. 282, effective December 22, 1982; amended at 7 Ill. Reg. 1927, effective January 28, 1983; amended at 7 Ill. Reg. 8574, effective July 11, 1983; amended at 7 Ill. Reg. 15821, effective November 15, 1983; amended at 7 Ill. Reg. 16988, effective December 14, 1983; amended at 8 Ill. Reg. 15585, 15589, and 15592, effective August 15, 1984; amended at 8 Ill. Reg. 16989, effective September 5, 1984; codified at 8 Ill. Reg. 19823; amended at 8 Ill. Reg. 24159, effective November 29, 1984; amended at 8 Ill. Reg. 24656, effective December 7, 1984; amended at 8 Ill. Reg. 25083, effective December 14, 1984; amended at 9 Ill. Reg. 122, effective December 26, 1984; amended at 9 Ill. Reg. 10785, effective July 1, 1985; amended at 11 Ill. Reg. 16782, effective October 1, 1987; amended at 12 Ill. Reg. 931, effective December 24, 1987; amended at 12 Ill. Reg. 16780, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18243, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 6301, effective April 17, 1989; amended at 13 Ill. Reg. 19521, effective December 1, 1989; amended at 14 Ill. Reg. 14904, effective October 1, 1990; amended at 15 Ill. Reg. 1878, effective January 25, 1991; amended at 16 Ill. Reg. 623, effective January 1, 1992; amended at 16 Ill. Reg. 14329, effective September 3, 1992; emergency amendment at 17 Ill. Reg. 2390, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 7974, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; amended at 17 Ill. Reg. 15073, effective September 3, 1993; amended at 17 Ill. Reg. 16167, effective January 1, 1994; amended at 17 Ill. Reg. 19235, effective October 26, 1993; amended at 17 Ill. Reg. 19547, effective November 4, 1993; amended at 17 Ill. Reg. 21031, effective November 20, 1993; amended at 18 Ill. Reg. 1453, effective January 14, 1994; amended at 18 Ill. Reg. 15807, effective October 15, 1994; amended at 19 Ill. Reg. 11525, effective July 29, 1995; emergency amendment at 20 Ill. Reg. 535, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 10106, effective July 15, 1996; amended at 20 Ill. Reg. 12101, effective September 10, 1996; amended at 22 Ill. Reg. 4062, effective February 13, 1998; amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART C: POLICIES

## Section 390.630 Admission and Discharge Policies

- a) Residents shall only be admitted who have had a comprehensive evaluation of their medical history and 7 physical and psycho/social factors, conducted by an appropriately constituted, interdisciplinary team. No resident determined by professional evaluation to be in need of services not readily available in a particular facility shall be admitted to or kept in that facility. Additionally, emotional and

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- cognitive histories shall be evaluated when applicable and available. (B)
- b) A facility for persons under 22 years of age shall be used exclusively for persons under 22 years of age, except when the facility's interdisciplinary team has determined that either initial or continued placement in the facility is appropriate because of due to the resident's physical and mental functioning status, and that the facility has the service resources to meet the needs of the resident. The facility interdisciplinary team shall further determine that placement shall not constitute a serious danger to the other residents.
- c) A facility shall not refuse to discharge or transfer a resident when requested to do so by the resident himself or, if the resident is a minor, by the resident's parent or guardian.
- d) If a resident insists on being discharged and is discharged against medical advice, the facts involved in the situation shall be fully documented in the resident's ~~his~~ clinical record.
- e) No resident shall be discharged without the concurrence of the attending physician. If such approval is given, the facility shall have the right to discharge or transfer a resident to an appropriate resource in accordance with Sections 3-401 through 3-423 of the Act.
- f) No resident shall be admitted with a communicable, contagious or infectious disease ~~as set forth in Section 390.1020(c)(1) through (5)~~ unless the facility is properly staffed and equipped to treat such conditions as approved in writing by the Department (see Section 390.1020(c) of this Part).
- g) A facility shall not admit more residents than the number authorized by the license issued to it. (B)
- h) Before a prospective resident's admission to a facility, the facility shall advise the prospective resident to consult a physician to determine whether the prospective resident should obtain a vaccination against pneumococcal pneumonia. (Section 2-213 of the Nursing Home Care Act)

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

## Section 390.681 Health Care Worker Background Check

- a) The facility shall not knowingly hire any individual after January 1, 1996 in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the following offenses (Section 25 of the Health Care Worker Background Check Act [225 ILCS 46/25]):
- 1) Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1 and 8-1.2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 8-1.1 and 8-1.2)).

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- 2)†† Murder, homicide, manslaughter or concealment of a homicidal death (Sections 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2 and 9-3.3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3; Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 3, 236, 358, 360, 361, 362, 363, 364, 364a, 365, 370, 373, 373a, 417, and 474));
- 3)†† Kidnapping or child abduction (Sections 10-1, 10-2, 10-5 and 10-7 of the Criminal Code of 1961 [720 ILCS 5/10-1, 10-2, 10-5, and 10-7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-1, 10-2, 10-5, and 10-7; Ill. Rev. Stat. 1985, ch. 38, par. 10-6; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 384 to 386));
- 4)†† Unlawful restraint or forcible detention (Sections 10-3, 10-3.1, and 10-4 of the Criminal Code of 1961 [720 ILCS 5/10-3, 10-3.1, and 10-4] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-3, 10-3.1, and 10-4; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 252, 252.1, and 252.4));
- 5) Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography (Sections 11-6, 11-9.1, 11-19.2, and 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-6, 11-9.1, 11-19.2, and 11-20.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-6, 11-19.2, and 11-20.1; Ill. Rev. Stat. 1983, ch. 38, par. 11-20a; Ill. Rev. Stat. 1961, ch. 38, pars. 103 and 104));
- 6)†† Assault, battery, heinous battering, tampering with food, drugs or cosmetics, or infliction of great bodily harm (Sections 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7 of the Criminal Code of 1961 [720 ILCS 5/12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7; Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 55, 56, and 56a to 60b));
- 7) Aggravated stalking (Section 12-7.4 of the Criminal Code of 1961 [720 ILCS 5/12-7.4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-7.4));
- 8) Home invasion (Section 12-11 of the Criminal Code of 1961 [720 ILCS 5/12-11] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-11));
- 9)† Sexual assault or sexual abuse (Sections 12-13, 12-14, 12-14.1, 12-15, and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-13, 12-14, 12-14.1, 12-15, and 12-16] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-1, 11-2, 11-3, 11-4, 11-5, 12-13, 12-14, 12-15, and 12-16; Ill. Rev. Stat. 1985, ch. 38, pars. 11-1, 11-4, and 11-4.1; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 109, 141, 142, 490, and 491));

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- 10)16† Abuse or gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-19));
- 11)†† Criminal neglect of an elderly or disabled person (Section 12-21 of the Criminal Code of 1961 [720 ILCS 5/12-21] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-21));
- 12) Endangering the life or health of a child (Section 12-21.6 of the Criminal Code of 1961 [720 ILCS 5/12-21.6] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354; Ill. Rev. Stat. 1961, ch. 38, par. 95));
- 13) Ritual mutilation, ritualized abuse of a child (Sections 12-32 and 12-33 of the Criminal Code of 1961 [720 ILCS 5/12-32 and 12-33] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-32 and 12-33));
- 14)18† Theft, retail theft (Sections 16-1 and 16A-3 of the Criminal Code of 1961 [720 ILCS 5/16-1 and 16A-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 16-1 and 16A-3; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 62, 207 to 218, 240 to 244, 246, 253, 254.1, 258, 262, 262a, 273, 290, 291, 301a, 354, 387 to 388b, 389, 393 to 400, 404a to 404c, 438, 492 to 496));
- 15)9† Financial exploitation of an elderly or disabled person (Section 16-1.3 of the Criminal Code of 1961 [720 ILCS 5/16-1.3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 16-1.3));
- 16) Forgery (Section 17-3 of the Criminal Code of 1961 [720 ILCS 5/17-3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 17-3; Ill. Rev. Stat. 1961, ch. 38, pars. 151 and 277 to 286));
- 17)10† Robbery, armed robbery (Sections 18-1 and 18-2 of the Criminal Code of 1961 [720 ILCS 5/18-1 and 18-2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 18-1 and 18-2));
- 18) Vehicular hijacking, aggravated vehicular hijacking, aggravated robbery (Sections 18-3, 18-4, and 18-5 of the Criminal Code of 1961 [720 ILCS 5/18-3, 18-4, and 18-5]);
- 19)11† Burglary, residential burglary (Sections 19-1 and 19-3 of the Criminal Code of 1961 [720 ILCS 5/19-1 and 19-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 19-1 and 19-3; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 84 to 86, 88, and 501));
- 20)2† Criminal trespass to a residence (Section 19-4 of the Criminal Code of 1961 [720 ILCS 5/19-4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 19-4));
- 21)13† Arson (Sections 20-1 and 20-1.1 of the Criminal Code of 1961 [720 ILCS 5/20-1 and 20-1.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 20-1 and 20-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 40 to 53 and 236 to 238));
- 22)14† Unlawful use of weapons, or aggravated discharge of a firearm, or reckless discharge of a firearm (Sections 24-1, and 24-1.2, and 24-1.5 of the Criminal Code of 1961 [720 ILCS 5/24-1, and 24-1.2, and 24-1.5] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 24-1 and 24-1.2; Ill. Rev. Stat. 1961, ch. 38, pars. Sections



## DEPARTMENT OF PUBLIC HEALTH

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- 152, 152a, 155, 155a to 158b, 414a to 414c, 414e and 414g));
- 23) Armed violence - elements of the offense (Section 33A-2 of the Criminal Code of 1961 [720 ILCS 5/33A-2] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 33A-2)):
- 24) Those provided in Section 4 of the Wrongs to Children Act (Section 4 of the Wrongs to Children Act [720 ILCS 150/4] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354)):
- 25) Cruelty to children (Section 53 of the Criminal Jurisprudence Act [720 ILCS 115/53] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2368)):
- 26) Manufacture, delivery or trafficking of cannabis, delivery of cannabis on school grounds, or deliver to person under 18; violation by person under 18 (Sections 5, 5.1, 5.2, 7, and 9 of the Cannabis Control Act [720 ILCS 550/5, 5.1, 5.2, 7, and 9] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 705, 705.1, 705.2, 707 and 709)); or
- 27) Manufacture, delivery or trafficking of controlled substances (Sections 401, 401.1, 404, 405, 405.1, 407 and 407.1 of the Illinois Controlled Substance Act [720 ILCS 570/401, 401.1 404, 405, 405.1, 407, and 407.1] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 1401, 1401.1, 1404, 1405, 1405.1, 1407, and 1407.1)).
- b) The facility shall not knowingly employ or retain any individual after ~~January 17, 1997~~ in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) ¶16 of this Section unless the applicant, employee or employer obtains a waiver pursuant to subsections (k) and (m) of this Section. (Section 25 of the Health Care Worker Background Check Act)
- c) For the purpose of this Section:
- 1) "Applicant" means an individual seeking employment with a facility who has received a bona fide conditional offer of employment.
  - 2) "Conditional offer of employment" means a bona fide offer of employment by a facility to an applicant, which is contingent upon the receipt of a report from the Department of State Police indicating that the applicant does not have a record of conviction of any of the criminal offenses listed in subsections (a)(1) to (27) ¶16 of this Section.
  - 3) "Direct care" means the provision of nursing care or assistance with meals, dressing, movement, bathing, or other personal needs or maintenance, or general supervision and oversight of the physical and mental well-being of an individual who is incapable of managing his or her person whether or not a guardian has been appointed for that individual.
  - 4) "Initiate" means the obtaining of the authorization for a record check from a student, applicant, or employee. (Section 15 of the Health Care Worker Background Check Act)

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- d) Beginning January 1, 1996, when the facility makes a conditional offer of employment to an applicant who is not exempt under subsection (g) of this Section, for a position with duties that involve direct care for residents, the employer shall inquire of the Nurse Aide Registry as to the status of the applicant's Uniform Conviction Information Act (UCIA) criminal history record check. If a UCIA criminal history record check has not been conducted within the last 12 months, the facility must initiate or have initiated on its behalf a UCIA criminal history record check for that applicant. (Section 30(c) of the Health Care Worker Background Check Act)
- e) The facility shall transmit all necessary information and fees to the Illinois State Police within 10 working days after receipt of the authorization. (Section 15 of the Health Care Worker Background Check Act)
- f) The facility may accept an authentic UCIA criminal history record check that has been conducted within the last 12 months rather than initiating a check as required in subsection (d) of this Section. The request for a UCIA criminal history record check shall be made as prescribed by the Department of State Police. The applicant or employee must be notified of the following whenever a non-fingerprint UCIA criminal history record check is made:
- 1) That the facility shall request or have requested on its behalf a non-fingerprint-based UCIA criminal history record check pursuant to the Health Care Worker Background Check Act.
  - 2) That the applicant or employee has a right to obtain a copy of the criminal records report, challenge the accuracy and completeness of the report, and request a waiver in accordance with subsection (k) of this Section.
  - 3) That the applicant, if hired conditionally, may be terminated if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) ¶16 of this Section unless the applicant's identity is validated and it is determined that the applicant or employee does not have a disqualifying criminal history record based on a fingerprint-based records check pursuant to subsection (i) of this Section.
  - 4) That the applicant, if not hired conditionally, shall not be hired if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) ¶16 of this Section unless the applicant's record is cleared based on a fingerprint-based records check pursuant to subsection (i) of this Section.
  - 5) That the employee may be terminated if the criminal records report indicates that the employee has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) ¶16 of this Section unless the employee's record is cleared



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based on a fingerprint-based records check pursuant to subsection (i) of this Section. (Section 30(e) and (f) of the Health Care Worker Background Check Act)

- h) A facility may conditionally employ an applicant to provide direct care for up to three months pending the results of a UCIA criminal history record check. (Section 30(g) of the Health Care Worker Background Check Act)
- i) An applicant or employee whose non-fingerprint-based UCIA criminal history record check indicates a conviction for committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) of this Section may request that the facility or its designee commence a fingerprint-based UCIA criminal records check by submitting any necessary fees and information in a form and manner prescribed by the Department of State Police. (Section 35 of the Health Care Worker Background Check Act)
- j) A facility having actual knowledge that an employee has been convicted of committing or attempting to commit one of the offenses enumerated in Section 25 of the Act must initiate a fingerprint-based background check within 10 working days after acquiring that knowledge. The facility may continue to employ that individual in a direct care position, may reassign that individual to a non-direct care position, or may suspend the individual until the results of the fingerprint-based background check are received. (Section 30(d) of the Health Care Worker Background Check Act)
- k) An applicant, employee or employer may request a waiver to subsection (a) or (b) of this Section by submitting the following to the Department within five working days after the receipt of the criminal records report:
  - 1) A completed fingerprint-based UCIA Criminal Records Check form (Section 40(a) of the Health Care Worker Background Check Act) (which the Department will forward to the Illinois State Police); and
  - 2) A certified check, money order or agency check made payable to the Department of State Police for the amount of money necessary to initiate a fingerprint-based UCIA Criminal Records Check.
- l) The Department may accept the results of the fingerprint-based UCIA criminal records check instead of the items required by subsections (k)(1) and (2) above.
- m) The Department may grant a waiver based on mitigating circumstances, which may include:
  - 1) The age at which the crime was committed;
  - 2) The circumstances surrounding the crime;
  - 3) The length of time since the conviction;
  - 4) The applicant's or employee's criminal history since the conviction;
  - 5) The applicant's or employee's work history;
  - 6) The applicant's or employee's current employment references;
  - 7) The applicant's or employee's character references;

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- 8) Nurse Aide Registry records; and
- 9) Other evidence demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents. (Section 40(b) of the Health Care Worker Background Check Act)
- n) An individual may not be employed in a direct care position during the pendency of a waiver request. (Section 10(d) of the Health Care Worker Background Check Act)
- o) A facility is not obligated to employ or offer permanent employment to an applicant, or to retain an employee who is granted a waiver. (Section 40(f) of the Health Care Worker Background Check Act)
- p) A facility may retain the individual in a direct care position if the individual presents clear and convincing evidence to the facility that the non-fingerprint-based criminal records report is invalid and if there is a good faith belief on the part of the employer that the individual did not commit an offense listed in subsections (a)(1) to (27) of this Section, pending positive verification through a fingerprint-based criminal records check. Such evidence may include, but not be limited to:
  - 1) certified court records;
  - 2) written verification from the State's Attorney's office that prosecuted the conviction at issue;
  - 3) written verification of employment during the time period during which the crime was committed or during the incarceration period stated in the report;
  - 4) a signed affidavit from the individual concerning the validity of the report; or
  - 5) documentation from a local law enforcement agency that the individual was not convicted of a disqualifying crime.
- q) This Section shall not apply to:
  - 1) An individual who is licensed by the Department of Professional Regulation or the Department of Public Health under another law of this State;
  - 2) An individual employed or retained by a health care employer for whom a criminal background check is required by another law of this State; or
  - 3) A student in a licensed health care field including, but not limited to, a student nurse, a physical therapy student, or a respiratory care student unless he or she is employed by a health care employer in a position with duties involving direct care for residents. (Section 20 of the Health Care Worker Background Check Act)
- r) An employer need not initiate an additional criminal background check for an employee if the employer initiated a criminal background check for the employee after January 1, 1996 and prior to January 1, 1998. This subsection applies only to persons employed prior to January 1, 1998. Any person newly employed on or after January 1, 1998 must

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receive a background check as required by Section 30 of the Health Care Worker Background Check Act. (Section 25.1 of the Health Care Worker Background Check Act)

s)† The facility must send a copy of the results of the UCIA criminal history record check to the State Nurse Aide Registry for those individuals who are on the Registry. (Section 30(b) of the Health Care Worker Background Check Act) The facility shall include the individual's Social Security number on the criminal history record check results.

t)† The facility shall retain on file for a period of 5 years records of criminal records requests for all employees. The facility shall retain the results of the UCIA criminal history records check and waiver, if appropriate, for the duration of the individual's employment. The files shall be subject to inspection by the Department. A fine of \$500 shall be imposed for failure to maintain these records. (Section 50 of the Health Care Worker Background Check Act)

u)† The facility shall maintain a copy of the employee's criminal history record check results and waiver, if applicable, in the personnel file or other secure location accessible to the Department.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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- 1) Heading of the Part: Sheltered Care Facilities Code
- 2) Code Citation: 77 Ill. Adm. Code 330
- 3) Section Numbers: Proposed Action:  
330.160 Amendments  
330.163 New Section  
330.720 Amendments  
330.911 Amendments

4) Statutory Authority: Nursing Home Care Act [210 ILCS 45]

5) A Complete Description of the Subjects and Issues Involved: This rulemaking implements legislation enacted in 1997. Section 330.160 is amended and Section 330.163 is being added in response to P.A. 90-341 (effective January 1, 1998), which created the Alzheimer's Special Care Disclosure Act and amended the Nursing Home Care Act. A facility that has an Alzheimer's special care unit or center is required to provide information to the Department at the time of licensure renewal concerning the services offered. The information must also be provided to actual or potential clients. Section 330.720 is being amended to implement P.A. 90-366 (effective August 10, 1997), which amended the Nursing Home Care Act to require a facility to advise a prospective resident to consult a physician to determine whether the prospective resident should obtain a vaccination against pneumococcal pneumonia. Section 330.911 is being amended to add disqualifying crimes under the Health Care Worker Background Check Act, pursuant to P.A. 90-441 (effective January 1, 1998). Additional new statutory language states that an employer need not initiate an additional criminal background check for an employee for whom a background check was initiated between January 1, 1996, and January 1, 1998.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

The Department anticipates adoption of this rulemaking approximately six to nine months after publication of the notice in the *Illinois Register*.

- 6) Will this Rulemaking Replace an Emergency Rule Currently in Effect? No
- 7) Does this Rulemaking Contain an Automatic Repeal Date? No
- 8) Does this Rulemaking Contain Any Incorporations By Reference? No
- 9) Are there any other Proposed Amendments Pending on this Part? Yes

Section Numbers    Proposed Action    Illinois Register Citation

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The full text of the Proposed Amendments begins on the next page:

330.315	Amendments	21 Ill. Reg. 6770
330.340	Amendments	21 Ill. Reg. 15412
330.770	Amendments	21 Ill. Reg. 6770
330.3040	Amendments	21 Ill. Reg. 15412
330.4230	Repealer	21 Ill. Reg. 15412
330.Table A	Amendments	21 Ill. Reg. 6770

10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State Mandate.

11) Time, Place, and Manner in which Interested Persons May Comment on this Rulemaking: Interested persons may present their comments concerning these rules by writing within 45 day after this issue of the *Illinois Register* to:

Ms. Gail M. DeVito  
Division of Legal Services  
Illinois Department of Public Health  
535 West Jefferson Fifth Floor  
Springfield, IL 62761  
217/782-2043  
E-mail: rules@idph.state.il.us

These rules may have an impact on small businesses. In accordance with Sections 1-75 and 5-30 of the Illinois Administrative Procedure Act, any small business may present their comments in writing to Gail M. DeVito at the above address.

Any small business (as defined in Section 1-75 of the Illinois Administrative Procedure Act) commenting on these rules shall indicate their status as such, in writing, in their comments.

12) Initial Regulatory Flexibility Analysis:

- A) Type of Small Businesses, Small Municipalities and Not-for-Profit Corporations Affected: Long-term care facilities
  - B) Reporting, Bookkeeping or Other Procedures Required for Compliance: New reporting procedures for facilities with Alzheimer's units or centers are prescribed herein.
  - C) Types of Professional Skills Necessary for Compliance: Professional skills necessary for the operation of a long-term care facility
- 13) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because: This rulemaking implements legislation that was passed after the publication of the Department's most recent Regulatory Agenda



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TITLE 77: PUBLIC HEALTH  
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH  
SUBCHAPTER c: LONG-TERM CARE FACILITIES

## PART 330

## SHELTERED CARE FACILITIES CODE

## SUBPART A: GENERAL PROVISIONS

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330.110	General Requirements
330.120	Application for License
330.130	Licensee
330.140	Issuance of an Initial License For a New Facility
330.150	Issuance of an Initial License Due to a Change of Ownership
330.160	Issuance of a Renewal License
330.163	Alzheimer's Special Care Disclosure
330.165	Criteria for Adverse Licensure Actions
330.170	Denial of Initial License
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330.180	Revocation of License
330.190	Experimental Program Conflicting With Requirements
330.200	Inspections, Surveys, Evaluations and Consultation
330.210	Filing an Annual Attested Financial Statement
330.220	Information to be Made Available to the Public By the Department
330.230	Information to be Made Available to the Public By the Licensee
330.240	Municipal Licensing
330.250	Ownership Disclosure
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330.270	Monitoring and Receivership
330.271	Presentation of Findings
330.272	Determination to Issue a Notice of Violation or Administrative Warning
330.274	Determination of the Level of a Violation
330.276	Notice of Violation
330.277	Administrative Warning
330.278	Plans of Correction
330.280	Reports of Correction
330.282	Conditions for Assessment of Penalties
330.284	Calculation of Penalties
330.286	Determination to Assess Penalties
330.288	Reduction or Waiver of Penalties
330.290	Quarterly List of Violators
330.300	Alcoholism Treatment Programs In Long-Term Care Facilities
330.310	Department May Survey Facilities Formerly Licensed
330.320	Waivers
330.330	Definitions
330.340	Incorporated and Referenced Materials

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## SUBPART B: ADMINISTRATION

Section	
330.510	Administrator

## SUBPART C: POLICIES

Section	
330.710	Resident Care Policies
330.720	Admission and Discharge Policies
330.730	Contract Between Resident and Facility
330.740	Residents' Advisory Council
330.750	General Policies
330.760	Personnel Policies
330.765	Initial Health Evaluation for Employees
330.770	Disaster Preparedness
330.780	Serious Incidents and Accidents

## SUBPART D: PERSONNEL

Section	
330.910	Personnel
330.911	Health Care Worker Background Check
330.913	Nursing and Personal Care Assistants (Repealed)
330.916	Student Interns (Repealed)
330.920	Consultation Services
330.930	Personnel Policies

## SUBPART E: HEALTH SERVICES AND MEDICAL CARE OF RESIDENTS

Section	
330.1110	Medical Care Policies
330.1120	Personal Care
330.1125	Life Sustaining Treatments
330.1130	Communicable Disease Policies
330.1135	Tuberculin Skin Test Procedures
330.1140	Behavior Emergencies (Repealed)
330.1145	Restraints
330.1150	Emergency Use of Physical Restraints
330.1155	Unnecessary, Psychotropic, and Antipsychotic Drugs

## SUBPART F: RESTORATIVE SERVICES

Section	
330.1310	Activity Program
330.1320	Work Programs
330.1330	Written Policies for Restorative Services

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## SUBPART G: MEDICATIONS

Section	Codes
330.1510	Medication Policies
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## SUBPART H: RESIDENT AND FACILITY RECORDS

Section	Codes
330.1710	Resident Record Requirements
330.1720	Content of Medical Records
330.1730	Records Pertaining to Residents' Property
330.1740	Retention and Transfer of Resident Records
330.1750	Other Resident Record Requirements
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## SUBPART I: FOOD SERVICE

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330.1910	Director of Food Services
330.1920	Dietary Staff in Addition to Director of Food Services
330.1930	Hygiene of Dietary Staff
330.1940	Diet Orders
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330.1960	Therapeutic Diets
330.1970	Scheduling of Meals
330.1980	Menu Planning
330.1990	Food Preparation and Service
330.2000	Food Handling Sanitation
330.2010	Kitchen Equipment, Utensils, and Supplies

## SUBPART J: MAINTENANCE, HOUSEKEEPING AND LAUNDRY

Section	Codes
330.2210	Maintenance
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## SUBPART K: FURNISHINGS, EQUIPMENT, AND SUPPLIES

Section	Codes
330.2410	Furnishings
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## SUBPART L: WATER SUPPLY AND SEWAGE DISPOSAL

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Section	Codes
330.2610	Water Supply
330.2620	Sewage Disposal
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## SUBPART M: DESIGN AND CONSTRUCTION STANDARDS FOR NEW SHELTERED CARE FACILITIES

Section	Codes
330.2810	Applicable Requirements (Repealed)
330.2820	Applicability of These Standards
330.2830	Submission of a Program Narrative
330.2840	New Constructions, Additions, Conversions, and Alterations
330.2850	Preparation and Submission of Drawings and Specifications
330.2860	First Stage Drawings
330.2870	Second Stage Drawings
330.2880	Architectural Drawings
330.2890	Structural Drawings
330.3000	Mechanical Drawings
330.3010	Electrical Drawings
330.3020	Additions to Existing Structures
330.3030	Specifications
330.3040	Building Codes
330.3050	Site
330.3060	General Building Requirements
330.3070	Administration
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330.3100	Living, Dining, Activity Rooms
330.3110	Bedrooms
330.3120	Special Care Room
330.3130	Kitchen
330.3140	Laundry
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330.3160	Plumbing
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## SUBPART N: FIRE PROTECTION STANDARDS FOR NEW SHELTERED CARE FACILITIES

Section	Codes
330.3310	Applicable Requirements (Repealed)
330.3320	Applicability of These Standards
330.3330	Fire Protection
330.3340	Fire Department Service and Water Supply
330.3350	General Building Requirements

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330.3360 Exit Facilities and Subdivision of Floor Areas  
 330.3370 Stairways, Vertical Openings, and Doorways  
 330.3380 Corridors  
 330.3390 Exit Lights and Directional Signs  
 330.3400 Hazardous Areas and Combustible Storage  
 330.3410 Fire Alarm and Detection System  
 330.3420 Fire Extinguishers, Electric Wiring, and Miscellaneous  
 330.3430 Use of Fire Extinguishers, Evacuation Plan, and Fire Drills

SUBPART O: DESIGN AND CONSTRUCTION STANDARDS FOR  
 EXISTING SHELTERED CARE FACILITIES

Section  
 330.3610 Site  
 330.3620 General Building Requirements  
 330.3630 Administration  
 330.3640 Corridors  
 330.3650 Bath and Toilet Rooms  
 330.3660 Living, Dining, and Activity Rooms  
 330.3670 Bedrooms  
 330.3680 Special Care Room  
 330.3690 Kitchen  
 330.3700 Laundry Room  
 330.3710 Housekeeping and Service Rooms and Storage Space  
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SUBPART P: FIRE PROTECTION STANDARDS FOR EXISTING  
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Section  
 330.3910 Fire Protection  
 330.3920 Fire Department Service and Water Supply  
 330.3930 Occupancy and Fire Areas  
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 330.3960 Exit and Fire Escape Lights and Directional Signs  
 330.3970 Hazardous Areas and Combustible Storage  
 330.3980 Fire Alarm and Detection System  
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## SUBPART Q: RESIDENT'S RIGHTS

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 330.4210 General  
 330.4220 Medical and Personal Care Program  
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330.4240 Abuse and Neglect  
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 330.4270 Residents' Advisory Council  
 330.4280 Contract With Facility  
 330.4290 Private Right of Action  
 330.4300 Transfer or Discharge  
 330.4310 Complaint Procedures  
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## SUBPART R: DAY CARE PROGRAMS

Section  
 330.4510 Day Care In Long-Term Care Facilities  
 APPENDIX A Interpretation, Components, and Illustrative Services for Sheltered Care Facilities  
 APPENDIX B Classification of Distinct Part of a Facility For Different Levels of Service (Repealed)  
 APPENDIX C Forms for Day Care in Long-Term Care Facilities  
 APPENDIX D Criteria for Activity Directors Who Need Only Minimal Consultation  
 APPENDIX E Guidelines for the Use of Various Drugs  
 TABLE A Disaster Preparedness Parameters -- Relative Humidity and Temperature

AUTHORITY: Implementing and authorized by the Nursing Home Care Act (210 ILCS 45).

SOURCE: Emergency rules adopted at 4 Ill. Reg. 10, p. 807, effective March 1, 1980, for a maximum of 150 days; adopted at 4 Ill. Reg. 30, p. 933, effective July 28, 1980; amended at 6 Ill. Reg. 5981, effective May 3, 1982; amended at 6 Ill. Reg. 8198, effective June 29, 1982; amended at 6 Ill. Reg. 14547, effective November 8, 1982; amended at 6 Ill. Reg. 14681, effective November 15, 1982; amended at 7 Ill. Reg. 1963, effective January 28, 1983; amended at 7 Ill. Reg. 6973, effective May 17, 1983; amended at 7 Ill. Reg. 15825, effective November 15, 1983; amended at 8 Ill. Reg. 15596, effective August 15, 1984; amended at 8 Ill. Reg. 15941, effective August 17, 1984; codified at 8 Ill. Reg. 19790; amended at 8 Ill. Reg. 24241, effective November 28, 1984; amended at 8 Ill. Reg. 24696, effective December 7, 1984; amended at 9 Ill. Reg. 2952, effective February 25, 1985; amended at 9 Ill. Reg. 10974, effective July 1, 1985; amended at 11 Ill. Reg. 16879, effective October 1, 1987; amended at 12 Ill. Reg. 1017, effective December 24, 1987; amended at 12 Ill. Reg. 16870, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18939, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 6562, effective April 17, 1989; amended at 13 Ill. Reg. 19580, effective December 1, 1989; amended at 14 Ill. Reg. 14928, effective



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October 1, 1990; amended at 15 Ill. Reg. 516, effective January 1, 1991; amended at 16 Ill. Reg. 651, effective January 1, 1992; amended at 16 Ill. Reg. 14370, effective September 3, 1992; emergency amendment at 17 Ill. Reg. 2405, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 8000, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; amended at 17 Ill. Reg. 15089, effective September 3, 1993; amended at 17 Ill. Reg. 16180, effective January 1, 1994; amended at 17 Ill. Reg. 19258, effective October 26, 1993; amended at 17 Ill. Reg. 19576, effective November 4, 1993; amended at 17 Ill. Reg. 21044, effective November 20, 1993; amended at 18 Ill. Reg. 1475, effective January 14, 1994; amended at 18 Ill. Reg. 15851, effective October 15, 1994; amended at 19 Ill. Reg. 11567, effective July 29, 1995; emergency amendment at 20 Ill. Reg. 552, effective January 1, 1996, for a maximum of 150 days; emergency expired on May 29, 1996; amended at 20 Ill. Reg. 10125, effective July 15, 1996; amended at 20 Ill. Reg. 12160, effective September 10, 1996; amended at 22 Ill. Reg. 4078, effective February 13, 1998; amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL PROVISIONS

## Section 330.160 Issuance of a Renewal License

At least 120 days, but not more than 150 days, prior to license expiration, the licensee shall submit an application for renewal of the license in such form and containing such information as the Department requires. If the application is approved, and the facility is in compliance with all other licensure requirements, the license shall be renewed for an additional one year or two year period. The renewal application shall not be approved unless the applicant has provided to the Department an accurate disclosure document in accordance with the Alzheimer's Special Care Disclosure Act and Section 330.163 of this Part, if applicable. (Section 3-115 of the Act)

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 330.163 Alzheimer's Special Care Disclosure

A facility that offers to provide care for persons with Alzheimer's disease through an Alzheimer's special care unit or center shall disclose to the Department or to a potential or actual client of the facility the following information in writing on request of the Department or client:

- The form of care or treatment that distinguishes the facility as suitable for persons with Alzheimer's disease.
- The philosophy of the facility concerning the care or treatment of persons with Alzheimer's disease.
- The facility's pre-admission, admission, and discharge procedures.
- The facility's assessment, care planning, and implementation.

guidelines in the care and treatment of persons with Alzheimer's disease.

e) The facility's minimum and maximum staffing ratios, specifying the general licensed health care provider to client ratio and the trainee health care provider to client ratio;

f) The facility's physical environment;

g) Activities available to clients at the facility;

h) The role of family members in the care of clients at the facility; and

i) The costs of care and treatment under the program or at the center. (Section 15 of the Alzheimer's Special Care Disclosure Act)

(Source: Added at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART C: POLICIES

## Section 330.720 Admission and Discharge Policies

## a) Admission Restrictions

- No resident determined by professional evaluation to be in need of nursing care shall be admitted to or kept in a sheltered care facility. Neither shall any such resident be kept in a distinct part designated and classified for sheltered care. (b) Homes in Chicago licensed as Residential Care (Half-Way) Homes shall only accept and keep only persons requiring residential care. Residential care is defined as maintenance and oversight. Oversight is defined as general watchfulness and appropriate action to meet the total needs of residents, exclusive of nursing or personal care, as defined in Chapter 136.1 of the "Municipal Code of the City of Chicago." Oversight shall include, at a minimum, social, recreational, and employment opportunities for residents who, by reason of previous physical or mental disability, or in the opinion of a licensed physician, are in need of residential care.

b) Each facility shall have a policy concerning the admission of persons needing prenatal or maternity care, and a policy concerning the keeping of such persons who become pregnant while they are residents of the facility. If these policies permit such persons to be admitted to, or kept in the facility, then the facility shall have a policy concerning the provision of adequate and appropriate prenatal and maternity care to such individuals from in-house or outside resources. No resident shall be admitted to or kept in the facility:

- Who is mentally ill, in need of mental treatment, and at risk because of the mental illness; the person is reasonably expected to self-inflict serious physical harm or to inflict serious physical harm on another person in the near future as a result of the mental illness, as determined by professional evaluation; --(b)

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- 2) Who is destructive of property or himself; or--(B)  
 3) Who has serious mental or emotional problems based on medical diagnosis.
- d) Children under 18 years of age shall may not be cared for in a facility for adults.
- e) A facility shall not refuse to discharge or transfer a resident when requested to do so by the resident himself or, if the resident is incompetent, by the resident's guardian.
- f) No resident shall be admitted with a communicable, contagious or infectious disease as set forth in Section 330.1130(a) through (c) of this Part. ~~(A)-(B)~~
- g) A facility shall not admit more residents than the number authorized by the license issued to it. ~~(B)~~
- h) Before a prospective resident's admission to a facility, the facility shall advise the prospective resident to consult a physician to determine whether the prospective resident should obtain a vaccination against pneumococcal pneumonia. (Section 2-213 of the Act)

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART D: PERSONNEL

## Section 330.911 Health Care Worker Background Check

- a) The facility shall not knowingly hire any individual ~~after January 1, 1997~~ in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the following offenses (Section 25 of the Health Care Worker Background Check Act [225 ILCS 46/25]):
- 1) Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1 and 8-1.2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 8-1.1 and 8-1.2));
- 2) Murder, homicide, manslaughter or concealment of a homicidal death (Sections 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2 and 9-3.3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2 and 9-3.3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2 and 9-3.3); Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. ~~Sections~~ 3, 236, 358, 360, 361, 362, 363, 364, 364a, 365, 370, 373, 373a, 417, and 474));
- 3) Kidnaping or child abduction (Sections 10-1, 10-2, 10-5, and 10-7 of the Criminal Code of 1961 [720 ILCS 5/10-1, 10-2, 10-5 and 10-7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-1, 10-2, 10-5, and 10-7); Ill. Rev. Stat. 1985, ch. 38, par. 10-6; Ill. Rev. Stat. 1961, ch. 38, pars. ~~Sections~~ 384 to 386));
- 4) Unlawful restraint or forcible detention (Sections 10-3, 10-3.1,

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- and 10-4 of the Criminal Code of 1961 [720 ILCS 5/10-3, 10-3.1, and 10-4] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-3, 10-3.1, and 10-4; Ill. Rev. Stat. 1961, ch. 38, pars. ~~Sections~~ 252, 252.1, and 252.4));
- 5) Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography (Section 11-6, 11-9.1, 11-19.2, and 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-6, 11-9.1, 11-19.2, and 11-20.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-6, 11-9.2, and 11-20.1; Ill. Rev. Stat. 1983, ch. 38, par. 11-20a; Ill. Rev. Stat. 1961, ch. 38, pars. 103 and 104));
- 6) Assault, battery, heinous battery, tampering with food, drugs or cosmetics, or infliction of great bodily harm (Sections 12-1, 12-2, 12-3, 12-3.1 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7 of the Criminal Code of 1961 [720 ILCS 5/12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7); Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. ~~Sections~~ 55, 56, and 56a to 60b));
- 7) Aggravated stalking (Section 12-7.4 of the Criminal Code of 1961 [720 ILCS 5/12-7.4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-7.4));
- 8) Home invasion (Section 12-11 of the Criminal Code of 1961 [720 ILCS 5/12-11 (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-11));
- 9) Sexual assault or sexual abuse (Sections 12-13, 12-14, 12-14.1, 12-15, and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-13, 12-14, 12-14.1, 12-15, and 12-16 (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-1, 11-2, 11-3, 11-4, 11-5, 12-13, 12-14, 12-15, and 12-16); Ill. Rev. Stat. 1985, ch. 38, pars. 11-1, 11-4, and 11-4.1; Ill. Rev. Stat. 1961, ch. 38, pars. ~~Sections~~ 109, 141, 142, 490, and 491));
- 10) Abuse or gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-19));
- 11) Criminal neglect of an elderly or disabled person (Section 12-21 of the Criminal Code of 1961 [720 ILCS 5/12-21] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-21));
- 12) Endangering the life or health of a child (Section 12-21.6 of the Criminal Code of 1961 [720 ILCS 5/12-21.6] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354; Ill. Rev. Stat. 1961, ch. 38, par. 95));
- 13) Ritual mutilation, ritualized abuse of a child (Sections 12-32 and 12-33 of the Criminal Code of 1961 [720 ILCS 5/12-32 and 12-33] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-32 and 12-33));



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- 14) ~~14) Theft, retail theft (Sections 16-1 and 16A-3 of the Criminal Code of 1961 [720 ILCS 5/16-1 and 16A-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 16-1 and 16A-3); Ill. Rev. Stat. 1961, ch. 38, pars. Sections 62, 207 to 218, 240 to 244, 246, 253, 254.1, 258, 262, 262a, 273, 290, 291, 301a, 354, 387 to 388b, 389, 393 to 400, 404a to 404c, 438, 492 to 496));~~  
 15) ~~9) Financial exploitation of an elderly or disabled person (Section 16-1.3 of the Criminal Code of 1961 [720 ILCS 5/16-1.3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 16-1.3));~~  
 16) ~~Forgery (Section 17-3 of the Criminal Code of 1961 [720 ILCS 5/17-3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 17-3; Ill. Rev. Stat. 1961, ch. 38, pars. 151 and 277 to 286));~~  
 17) ~~10) Robbery, armed robbery (Sections 18-1 and 18-2 of the Criminal Code of 1961 [720 ILCS 5/18-1 and 18-2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 18-1 and 18-2));~~  
 18) ~~Vehicle hijacking, aggravated vehicular hijacking, aggravated robbery (Sections 18-3, 18-4, and 18-5 of the Criminal Code 1961 [720 ILCS 5/18-3, 18-4, and 18-5]);~~  
 19) ~~11) Burglary, residential burglary (Sections 19-1 and 19-3 of the Criminal Code of 1961 [720 ILCS 5/19-1 and 19-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 19-1 and 19-3; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 84 to 86, 88, and 501));~~  
 20) ~~12) Criminal trespass to a residence (Section 19-4 of the Criminal Code of 1961 [720 ILCS 5/19-4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 19-4));~~  
 21) ~~13) Arson (Sections 20-1 and 20-1.1 of the Criminal Code of 1961 [720 ILCS 5/20-1 and 20-1.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 20-1 and 20-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 48 to 53 and 236 to 238));~~  
 22) ~~14) Unlawful use of weapons, or aggravated discharge of a firearm, or reckless discharge of a firearm (Sections 24-1, and 24-1.2, and 24-1.5 of the Criminal Code of 1961 [720 ILCS 5/24-1, and 24-1.2, and 24-1.5] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 24-1 and 24-1.2; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 152, 152a, 155, 155a to 158b, 414a to 414c, 414e, and 414g));~~  
 23 ~~Armed violence - elements of the offense (Section 33A-2 of the Criminal Code of 1961 [720 ILCS 5/33A-2] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 33A-2));~~  
 24) ~~Those provided in Section 4 of the Wrongs to Children Act (Section 4 of the Wrongs to Children Act [720 ILCS 150/4] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354));~~  
 25) ~~Cruelty to children (Section 53 of the Criminal Jurisprudence Act [720 ILCS 115/53] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2368));~~  
 26) ~~15) Manufacture, delivery or trafficking of cannabis, delivery of cannabis on school grounds, or delivery to person under 18, violation by person under 18 (Sections 5, 5.1, 5.2, 7, and 9 of the Cannabis Control Act [720 ILCS 550/5, 5.1, 5.2, 7, and 9]~~

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- (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 705, 705.1, 705.2, 707, and 709)); or  
 27) ~~16) Manufacture, delivery or trafficking of controlled substances (Sections 401, 401.1, 404, 405, 405.1, 407 and 407.1 of the Illinois Controlled Substances Act [720 ILCS 570/401, 401.1, 404, 405, 405.1, 407 and 407.1] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 1401, 1401.1, 1404, 1405, 1405.1, 1407, and 1407.1)).~~  
 b) The facility shall not knowingly employ or retain any individual after January 17, 1997, in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27i6) of this Section unless the applicant, employee or employer obtains a waiver pursuant to subsections (k) and (m) of this Section. (Section 25 of the Health Care Worker Background Check Act)  
 c) For the purpose of this Section:  
 1) "Applicant" means an individual seeking employment with a facility who has received a bona fide conditional offer of employment.  
 2) "Conditional offer of employment" means a bona fide offer of employment by a facility to an applicant, which is contingent upon the receipt of a report from the Department of State Police indicating that the applicant does not have a record of conviction of any of the criminal offenses listed in subsections (a)(1) to (27i6) of this Section.  
 3) "Direct care" means the provision of nursing care or assistance with meals, dressing, movement, bathing, or other personal needs or maintenance, or general supervision and oversight of the physical and mental well-being of an individual who is incapable of managing his or her person whether or not a guardian has been appointed for that individual.  
 4) "Initiate" means the obtaining of the authorization for a record check from a student, applicant, or employee. (Section 15 of the Health Care Worker Background Check Act)  
 d) Beginning January 1, 1996, when the facility makes a conditional offer of employment to an applicant who is not exempt under subsection (q) of this Section for a position with duties that involve direct care for residents, the employer must initiate or have initiated on its behalf a Uniform Conviction Information Act (UCIA) criminal history record check for that applicant. (Section 30(c) of the Health Care Worker Background Check Act) If the applicant is on the Department's Nurse Aide Registry in good standing and has had a UCIA criminal history record check within the last 12 months, the employer need not initiate another check.  
 e) The facility shall transmit all necessary information and fees to the Illinois State Police within 10 working days after receipt of the authorization. (Section 15 of the Health Care Worker Background Check Act)  
 f) The facility may accept an authentic UCIA criminal history record





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the non-fingerprint-based criminal records report is invalid and if there is a good faith belief on the part of the employer that the individual did not commit an offense listed in subsections (a)(1) to (27)(6) of this Section, pending positive verification through a fingerprint-based criminal records check. Such evidence may include, but not be limited to:

- 1) certified court records;
- 2) written verification from the State's Attorney's office that prosecuted the conviction at issue;
- 3) written verification of employment during the time period during which the crime was committed or during the incarceration period stated in the report;
- 4) a signed affidavit from the individual concerning the validity of the report; or
- 5) documentation from a local law enforcement agency that the individual was not convicted of a disqualifying crime.

q) This Section shall not apply to:

- 1) An individual who is licensed by the Department of Professional Regulation or the Department of Public Health under another law of this State;
- 2) An individual employed or retained by a health care employer for whom a criminal background check is required by another law of this State; or
- 3) A student in a licensed health care field including, but not limited to, a student nurse, a physical therapy student, or a respiratory care student unless he or she is employed by a health care employer in a position with duties involving direct care for residents. (Section 20 of the Health Care Worker Background Check Act)

r) An employer need not initiate an additional criminal background check for an employee if the employer initiated a criminal background check for the employee after January 1, 1996 and prior to January 1, 1998. This subsection applies only to persons employed prior to January 1, 1998. Any person newly employed on or after January 1, 1998 must receive a background check as required by Section 30 of the Health Care Worker Background Check Act. (Section 25.1 of the Health Care Worker Background Check Act)

s) The facility must send a copy of the results of the UCIA criminal history record check to the State Nurse Aide Registry for those individuals who are on the Registry. (Section 30(b) of the Health Care Worker Background Check Act) The facility shall include the individual's Social Security number on the criminal history record check results.

t) The facility shall retain on file for a period of 5 years records of criminal records requests for all employees. The facility shall retain the results of the UCIA criminal history records check and waiver, if appropriate, for the duration of the individual's employment. The files shall be subject to inspection by the

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Department. A fine of \$500 shall be imposed for failure to maintain these records. (Section 50 the Health Care Worker Background Check Act)

u) The facility shall maintain a copy of the employee's criminal history record check results and waiver, if applicable, in the personnel file or other secure location accessible to the Department.

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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1) Heading of the Part: Skilled Nursing and Intermediate Care Facilities Code2) Code Citation: 77 Ill. Adm. Code 3003) Section Numbers:

300.160 Amendments  
 300.163 New Section  
 300.620 Amendments  
 300.661 Amendments

4) Statutory Authority: Nursing Home Care Act [210 ILCS 45]5) A Complete Description of the Subjects and Issues Involved:

This rulemaking implements legislation enacted in 1997. Section 300.160 is amended and Section 300.163 is being added in response to P.A. 90-341 (effective January 1, 1998), which created the Alzheimer's Special Care Disclosure Act and amended the Nursing Home Care Act. A facility that has an Alzheimer's special care unit or center is required to provide information to the Department at the time of licensure renewal concerning the services offered. The information must also be provided to actual or potential clients. Section 300.620 is being amended to implement P.A. 90-366 (effective August 10, 1997), which amended the Nursing Home Care Act to require a facility to advise a prospective resident to consult a physician to determine whether the prospective resident should obtain a vaccination against pneumococcal pneumonia. Section 300.661 is being amended to add disqualifying crimes under the Health Care Worker Background Check Act, pursuant to P.A. 90-441 (effective January 1, 1998). Additional new statutory language states that an employer need not initiate an additional criminal background check for an employee for whom a background check was initiated between January 1, 1996 and January 1, 1998.

The economic effect of this proposed rulemaking is unknown. Therefore, the Department requests any information that would assist in calculating this effect.

The Department anticipates adoption of this rulemaking approximately six to nine months after publication of the notice in the *Illinois Register*.

6) Will this Rulemaking Replace an Emergency Rule Currently in Effect? No7) Does this Rulemaking Contain an Automatic Repeal Date? No8) Does this Rulemaking Contain Any Incorporations By Reference? No9) Are there any other Proposed Amendments Pending on this Part? Yes

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## Section Numbers Proposed Action Illinois Register Citation

300.315 Amendments 21 Ill. Reg. 6786  
 300.340 Amendments 21 Ill. Reg. 15425  
 300.670 Amendments 21 Ill. Reg. 6786  
 300.2820 Amendments 21 Ill. Reg. 15425  
 300.3230 Repealer 21 Ill. Reg. 15425  
 300. Table D Amendments 21 Ill. Reg. 6786

10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State Mandate.

11) Time, Place, and Manner in which Interested Persons May Comment on this Rulemaking: Interested persons may present their comments concerning these rules by writing within 45 days after this issue of the *Illinois Register* to:

Ms. Gail M. DeVito  
 Division of Legal Services  
 Illinois Department of Public Health  
 535 West Jefferson, Fifth Floor  
 Springfield, IL 62761  
 217/782-2043  
 E-mail: rules@idph.state.il.us

These rules may have an impact on small businesses. In accordance with Sections 1-75 and 5-30 of the Illinois Administrative Procedure Act, any small business may present their comments in writing to Gail M. DeVito at the above address.

Any small business (as defined in Section 1-75 of the Illinois Administrative Procedure Act) commenting on these rules shall indicate their status as such, in writing, in their comments.

12) Initial Regulatory Flexibility Analysis:

A) Type of Small Businesses, Small Municipalities and Not-for-Profit Corporations Affected: Long-term care facilities

B) Reporting, Bookkeeping or Other Procedures Required for Compliance: New reporting procedures for facilities with Alzheimer's units or centers are prescribed herein.

C) Types of Professional Skills Necessary for Compliance: Professional skills necessary for the operation of a long-term care facility.

13) Regulatory Agenda on which this rulemaking was summarized: This rule was not included on either of the 2 most recent agendas because: This



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rulemaking implements legislation that was passed after the publication of the Department's most recent Regulatory Agenda.

The full text of the Proposed Amendments begins on the next page:

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TITLE 77: PUBLIC HEALTH  
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH  
SUBCHAPTER c: LONG-TERM CARE FACILITIES

## PART 300

## SKILLED NURSING AND INTERMEDIATE CARE FACILITIES CODE

## SUBPART A: GENERAL PROVISIONS

Section	
300.110	General Requirements
300.120	Application for License
300.130	Licensee
300.140	Issuance of an Initial License for a New Facility
300.150	Issuance of an Initial License Due to a Change of Ownership
300.160	Issuance of a Renewal License
300.163	Alzheimer's Special Care Disclosure
300.165	Criteria for Adverse Licensure Actions
300.170	Denial of Initial License
300.175	Denial of Renewal of License
300.180	Revocation of License
300.190	Experimental Program Conflicting With Requirements
300.200	Inspections, Surveys, Evaluations and Consultation
300.210	Filing an Annual Attested Financial Statement
300.220	Information to Be Made Available to the Public By the Department
300.230	Information to Be Made Available to the Public By the Licensee
300.240	Municipal Licensing
300.250	Ownership Disclosure
300.260	Issuance of Conditional Licenses
300.270	Monitor and Receivership
300.271	Presentation of Findings
300.272	Determination to Issue a Notice of Violation or Administrative Warning
300.274	Determination of the Level of a Violation
300.276	Notice of Violation
300.277	Administrative Warning
300.278	Plans of Correction
300.280	Reports of Correction
300.282	Conditions for Assessment of Penalties
300.284	Calculation of Penalties
300.286	Determination to Assess Penalties
300.288	Reduction or Waiver of Penalties
300.290	Quarterly List of Violators
300.300	Alcoholism Treatment Programs In Long-Term Care Facilities
300.310	Department May Survey Facilities Formerly Licensed
300.320	Waivers
300.330	Definitions
300.340	Incorporated and Referenced Materials

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## SUBPART B: ADMINISTRATION

Section  
300.510 Administrator

## SUBPART C: POLICIES

Section  
300.610 Resident Care Policies  
300.620 Admission and Discharge Policies  
300.625 Determination of Need Screening  
300.630 Contract Between Resident and Facility  
300.640 Residents' Advisory Council  
300.650 Personnel Policies  
300.655 Initial Health Evaluation for Employees  
300.660 Nursing Assistants  
300.661 Health Care Worker Background Check  
300.663 Registry of Certified Nurse Aides  
300.665 Student Interns  
300.670 Disaster Preparedness  
300.680 Restraints  
300.682 Nonemergency Use of Physical Restraints  
300.684 Emergency Use of Physical Restraints  
300.686 Unnecessary, Psychotropic, and Antipsychotic Drugs  
300.690 Serious Incidents and Accidents

## SUBPART D: PERSONNEL

Section  
300.810 General  
300.820 Categories of Personnel  
300.830 Consultation Services  
300.840 Personnel Policies

## SUBPART E: MEDICAL AND DENTAL CARE OF RESIDENTS

Section  
300.1010 Medical Care Policies  
300.1020 Communicable Disease Policies  
300.1025 Tuberculin Skin Test Procedures  
300.1030 Medical Emergencies  
300.1035 Life-Sustaining Treatments  
300.1040 Behavior Emergencies (Repealed)  
300.1050 Dental Standards

## SUBPART F: NURSING AND PERSONAL CARE

Section

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300.1210 General Requirements for Nursing and Personal Care  
300.1220 Supervision of Nursing Services  
300.1230 Staffing  
300.1240 Additional Requirements

## SUBPART G: RESIDENT CARE SERVICES

Section  
300.1410 Activity Program  
300.1420 Specialized Rehabilitation Services  
300.1430 Work Programs

## SUBPART H: MEDICATIONS

Section  
300.1610 Medication Policies and Procedures  
300.1620 Conformance With Physician's Orders  
300.1630 Administration of Medication  
300.1640 Labeling and Storage of Medications  
300.1650 Control of Medications

## SUBPART I: RESIDENT AND FACILITY RECORDS

Section  
300.1810 Resident Record Requirements  
300.1820 Content of Medical Records  
300.1830 Records Pertaining to Residents' Property  
300.1840 Retention and Transfer of Resident Records  
300.1850 Other Resident Record Requirements  
300.1860 Staff Responsibility for Medical Records  
300.1870 Retention of Facility Records  
300.1880 Other Facility Record Requirements

## SUBPART J: FOOD SERVICE

Section  
300.2010 Director of Food Services  
300.2020 Dietary Staff in Addition to Director of Food Services  
300.2030 Hygiene of Dietary Staff  
300.2040 Diet Orders  
300.2050 Adequacy of Diet and Meal Pattern  
300.2060 Therapeutic Diets  
300.2070 Scheduling Meals  
300.2080 Menu Planning  
300.2090 Food Preparation and Service  
300.2100 Food Handling Sanitation  
300.2110 Kitchen Equipment, Utensils, and Supplies

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## SUBPART K: MAINTENANCE, HOUSEKEEPING, AND LAUNDRY

## Section

300.2210 Maintenance  
300.2220 Housekeeping  
300.2230 Laundry Services

## SUBPART L: FURNISHINGS, EQUIPMENT, AND SUPPLIES

## Section

300.2410 Furnishings  
300.2420 Equipment and Supplies  
300.2430 Sterilization of Equipment and Supplies

## SUBPART M: WATER SUPPLY AND SEWAGE DISPOSAL

## Section

300.2610 Codes  
300.2620 Water Supply  
300.2630 Sewage Disposal  
300.2640 Plumbing

SUBPART N: DESIGN AND CONSTRUCTION STANDARDS  
FOR NEW INTERMEDIATE CARE AND SKILLED NURSING FACILITIES

## Section

300.2810 Applicability of These Standards  
300.2820 Codes and Standards  
300.2830 Preparation of Drawings and Specifications  
300.2840 Site  
300.2850 Administration and Public Areas  
300.2860 Nursing Unit  
300.2870 Dining, Living, Activities Rooms  
300.2880 Therapy and Personal Care  
300.2890 Service Departments  
300.2900 General Building Requirements  
300.2910 Structural  
300.2920 Mechanical Systems  
300.2930 Plumbing Systems  
300.2940 Electrical Systems

SUBPART O: DESIGN AND CONSTRUCTION STANDARDS  
FOR EXISTING INTERMEDIATE CARE AND SKILLED NURSING FACILITIES

## Section

300.3010 Applicability  
300.3020 Codes and Standards  
300.3030 Preparation of Drawings and Specifications

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## Section

300.3040 Site  
300.3050 Administration and Public Areas  
300.3060 Nursing Unit  
300.3070 Living, Dining, Activities Rooms  
300.3080 Treatment and Personal Care  
300.3090 Service Departments  
300.3100 General Building Requirements  
300.3110 Structural  
300.3120 Mechanical Systems  
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## SUBPART P: RESIDENT'S RIGHTS

## Section

300.3210 General  
300.3220 Medical and Personal Care Program  
300.3230 Restraints  
300.3240 Abuse and Neglect  
300.3250 Communication and Visitation  
300.3260 Resident's Funds  
300.3270 Residents' Advisory Council  
300.3280 Contract With Facility  
300.3290 Private Right of Action  
300.3300 Transfer or Discharge  
300.3310 Complaint Procedures  
300.3320 Confidentiality  
300.3330 Facility Implementation

## SUBPART Q: SPECIALIZED LIVING FACILITIES FOR THE MENTALLY ILL

## Section

300.3410 Application of Other Divisions of These Minimum Standards  
300.3420 Administrator  
300.3430 Policies  
300.3440 Personnel  
300.3450 Resident Living Services Medical and Dental Care  
300.3460 Resident Services Program  
300.3470 Psychological Services  
300.3480 Social Services  
300.3490 Recreational and Activities Services  
300.3500 Individual Treatment Plan  
300.3510 Health Services  
300.3520 Medical Services  
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300.3540 Optometric Services  
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1984; amended at 8 Ill. Reg. 16999, effective September 5, 1984; codified at 8 Ill. Reg. 19766; amended at 8 Ill. Reg. 24186, effective November 29, 1984; amended at 8 Ill. Reg. 24668, effective December 7, 1984; amended at 8 Ill. Reg. 25102, effective December 14, 1984; amended at 9 Ill. Reg. 132, effective December 26, 1984; amended at 9 Ill. Reg. 4087, effective March 15, 1985; amended at 9 Ill. Reg. 11049, effective July 1, 1985; amended at 11 Ill. Reg. 16927, effective October 1, 1987; amended at 12 Ill. Reg. 1052, effective December 24, 1987; amended at 12 Ill. Reg. 16811, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18477, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 4684, effective March 24, 1989; amended at 13 Ill. Reg. 5134, effective April 1, 1989; amended at 13 Ill. Reg. 20089, effective December 1, 1989; amended at 14 Ill. Reg. 14950, effective October 1, 1990; amended at 15 Ill. Reg. 554, effective January 1, 1991; amended at 16 Ill. Reg. 681, effective January 1, 1992; amended at 16 Ill. Reg. 5977, effective March 27, 1992; amended at 16 Ill. Reg. 17089, effective November 3, 1992; emergency amendment at 17 Ill. Reg. 2420, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 8026, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; amended at 17 Ill. Reg. 15106, effective September 3, 1993; amended at 17 Ill. Reg. 16194, effective January 1, 1994; amended at 17 Ill. Reg. 19279, effective October 26, 1993; amended at 17 Ill. Reg. 19604, effective November 4, 1993; amended at 17 Ill. Reg. 21058, effective November 20, 1993; amended at 18 Ill. Reg. 1491, effective January 14, 1994; amended at 18 Ill. Reg. 15868, effective October 15, 1994; amended at 19 Ill. Reg. 11600, effective July 29, 1995; emergency amendment at 20 Ill. Reg. 567, effective January 1, 1996, for a maximum of 150 days; emergency expired May 29, 1996; amended at 20 Ill. Reg. 10142, effective July 15, 1996; amended at 20 Ill. Reg. 12208, effective September 10, 1996; amended at 21 Ill. Reg. 15000, effective November 15, 1997; amended at 22 Ill. Reg. 4094, effective February 13, 1998; amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART A: GENERAL PROVISIONS

Section 300.160 Issuance of a Renewal License

At least 120 days, but not more than 150 days, prior to license expiration, the licensee shall submit an application for renewal of the license in such form and containing such information as the Department requires. If the application is approved, and the facility is in compliance with all other licensure requirements and the facility is in compliance with all other licensure requirements, the license shall be renewed for an additional one year or two year period. The renewal application shall not be approved unless the applicant has provided to the Department an accurate disclosure document in accordance with the Alzheimer's Special Care Disclosure Act and Section 300.163 of this Part, if applicable. (Section 3-115 of the Act)

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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300.3570 Occupational Therapy Services  
300.3580 Nursing and Personal Care  
300.3590 Resident Care Services  
300.3600 Record Keeping  
300.3610 Food Service  
300.3620 Furnishings, Equipment and Supplies (New and Existing Facilities)  
300.3630 Design and Construction Standards (New and Existing Facilities)

SUBPART R: DAYCARE PROGRAMS

Section  
300.3710 Day Care in Long-Term Care Facilities

APPENDIX A Interpretation, Components, and Illustrative Services for Intermediate Care Facilities and Skilled Nursing Facilities

APPENDIX B Classification of Distinct Part of a Facility for Different Levels of Service (Repealed)

APPENDIX C Federal Requirements Regarding Patients'/Residents' Rights

APPENDIX D Forms for Day Care in Long-Term Care Facilities

APPENDIX E Criteria for Activity Directors Who Need Only Minimal Consultation

APPENDIX F Guidelines for the Use of Various Drugs

TABLE A Sound Transmission Limitations in New Skilled Nursing and Intermediate Care Facilities

TABLE B Pressure Relationships and Ventilation Rates of Certain Areas for New Intermediate Care Facilities and Skilled Nursing Facilities

TABLE C Construction Types and Sprinkler Requirements for Existing Skilled Nursing Facilities/Intermediate Care Facilities

TABLE D Disaster Preparedness Parameters - Relative Humidity and Temperature

AUTHORITY: Implementing and authorized by the Nursing Home Care Act [210 ILCS 45].

SOURCE: Emergency rules adopted at 4 Ill. Reg. 10, p. 1066, effective March 1, 1980, for a maximum of 150 days; adopted at 4 Ill. Reg. 30, p. 311, effective July 28, 1980; emergency amendment at 6 Ill. Reg. 3229, effective March 8, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 5981, effective May 3, 1982; amended at 6 Ill. Reg. 6454, effective May 14, 1982; amended at 6 Ill. Reg. 8198, effective June 29, 1982; amended at 6 Ill. Reg. 11631, effective September 14, 1982; amended at 6 Ill. Reg. 14550 and 14554, effective November 8, 1982; amended at 6 Ill. Reg. 14684, effective November 15, 1982; amended at 7 Ill. Reg. 285, effective December 22, 1982; amended at 7 Ill. Reg. 1972, effective January 28, 1983; amended at 7 Ill. Reg. 8579, effective July 11, 1983; amended at 7 Ill. Reg. 15831, effective November 10, 1983; amended at 7 Ill. Reg. 15864, effective November 15, 1983; amended at 7 Ill. Reg. 16992, effective December 14, 1983; amended at 8 Ill. Reg. 15599, 15603, and 15606, effective August 15, 1984; amended at 8 Ill. Reg. 15947, effective August 17,

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**Section 300.163 Alzheimer's Special Care Disclosure**

A facility that offers to provide care for persons with Alzheimer's disease through an Alzheimer's special care unit or center shall disclose to the Department or to a potential or actual client of the facility the following information in writing on request of the Department or Client:

- a) The form of care or treatment that distinguishes the facility as suitable for persons with Alzheimer's disease;
- b) The philosophy of the facility concerning the care or treatment of persons with Alzheimer's disease;
- c) The facility's pre-admission, admission, and discharge procedures;
- d) The facility's assessment, care planning, and implementation guidelines in the care and treatment of persons with Alzheimer's disease;
- e) The facility's minimum and maximum staffing ratios, specifying the general licensed health care provider to client ratio and the trainee health care provider to client ratio;
- f) The facility's physical environment;
- g) Activities available to clients at the facility;
- h) The role of family members in the care of clients at the facility; and
- i) The costs of care and treatment under the program or at the center. (Section 15 of the Alzheimer's Special Care Disclosure Act)

(Source: Added at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## SUBPART C: POLICIES

**Section 300.620 Admission and Discharge Policies**

- a) No resident determined by professional evaluation to be in need of services not readily available in a particular facility, or through arrangement with a qualified outside resource, shall be admitted to, or kept in that facility, provided that all involuntary discharges and transfers shall be in accordance with Sections 3-401 through 3-423 of the Act. The Department defines a "qualified outside source" as one recognized as meeting professional standards for services provided.†B†
- b) Each facility shall have a policy concerning the admission of persons needing prenatal and/or maternity care, and a policy concerning the keeping of such persons who become pregnant while they are residents of the facility. If these policies permit such persons to be admitted to or kept in the facility, then the facility shall have a policy concerning the provision of adequate and appropriate prenatal and maternity care to such individuals from in-house and/or outside resources (see Section 300.3220).
- c) No resident shall be admitted to or kept in the facility:

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- 1) Who is mentally ill, in need of mental treatment, and at risk because ~~due to the mental illness~~, the person is reasonably expected to self-inflict serious physical harm or to inflict serious physical harm on another person in the near future as a result of the mental illness, as determined by professional evaluation. All ~~7-provided-that~~ all involuntary discharges and transfers shall be in accordance with Sections 3-401 through 3-423 of the Act. †B†
- 2) Who is destructive of property, himself, or others, provided that all involuntary discharges and transfers shall be in accordance with Sections 3-401 through 3-423 of the Act. †B†
- d) No resident shall be admitted to the facility who is developmentally disabled and who needs programming for such conditions, as described in the rules governing intermediate care facilities for the developmentally disabled (77 Ill. Adm. Code 350). Such persons person shall only be admitted only to facilities licensed as intermediate care facilities for the developmentally disabled under 77 Ill. Adm. Code 350, or if the person is under 18, in a long-term care facility for persons under 22 years of age that which is licensed under 77 Ill. Adm. Code 390. Persons from 18 to 21 years of age in need of such care may be kept in either facility, provided that all involuntary discharges and transfers shall be in accordance with Sections 3-401 through 3-423 of the Act. †B†
- e) Persons under 18 years of age may not be cared for in a facility for adults without prior written approval from the Department.
- f) A facility shall not refuse to discharge or transfer a resident when requested to do so by the resident or, if the resident is incompetent, by the resident's guardian.
- g) If a resident insists on being discharged and is discharged against medical advice, the facts involved in the situation shall be fully documented in the resident's clinical record.
- h) Persons with communicable, contagious, or infectious diseases may be admitted under the conditions and in accordance with the procedures specified in Section 300.1020(b). †A†B†
- i) A facility shall not admit more residents than the number authorized by the license issued to it. †B†
- 1) Before a prospective resident's admission to a facility, the facility shall advise the prospective resident to consult a physician to determine whether the prospective resident should obtain a vaccination against pneumococcal pneumonia. (Section 2-213 of the Act)

(Source: Amended at 22 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 300.661 Health Care Worker Background Check**

- a) The facility shall not knowingly hire any individual ~~after January 1, 1997~~ in a position with duties involving direct care for residents if



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that person has been convicted of committing or attempting to commit one or more of the following offenses (Section 25 of the Health Care Worker Background Check Act [225 ILCS 46/25]):

1) Solicitation of murder, solicitation of murder for hire (Sections 8-1.1 and 8-1.2 of the Criminal Code of 1961 [720 ILCS 5/8-1.1 and 8-1.2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 8-1.1 and 8-1.2));

2) Murder, homicide, manslaughter or concealment of a homicidal death (Sections 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2 and 9-3.3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, and 9-3.3); Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 3, 236, 358, 360, 361, 362, 363, 364, 364a, 365, 370, 373, 373a, 417, and 474));

3) Kidnaping or child abduction (Sections 10-1, 10-2, 10-5 and 10-7 of the Criminal Code of 1961 [720 ILCS 5/10-1, 10-2, 10-5, and 10-7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-1, 10-2, 10-5, and 10-7); Ill. Rev. Stat. 1985, ch. 38, par. 10-6; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 384 to 386));

4) Unlawful restraint or forcible detention (Sections 10-3, 10-3.1, and 10-4 of the Criminal Code of 1961 [720 ILCS 5/10-3, 10-3.1, and 10-4] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 10-3, 10-3.1, and 10-4); Ill. Rev. Stat. 1961, ch. 38, pars. Sections 252, 252.1, and 252.4));

5) Indecent solicitation of a child, sexual exploitation of a child, exploitation of a child, child pornography (Sections 11-6, 11-9.1, 11-19.2, and 11-20.1 of the Criminal Code of 1961 [720 ILCS 5/11-6, 11-9.1, 11-19.2, and 11-20.1] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-6, 11-19.2, and 11-20.1); Ill. Rev. Stat. 1983, ch. 38, par. 11-20a; Ill. Rev. Stat. 1961, ch. 38, pars. 103 and 104));

6) Assault, battery, heinous battery, tampering with food, drugs or cosmetics, or infliction of great bodily harm (Sections 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7 of the Criminal Code of 1961 [720 ILCS 5/12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, and 12-4.7); Ill. Rev. Stat. 1961, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1985, ch. 38, par. 9-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 55, 56, and 56a to 60b));

7) Aggravated stalking (Section 12-7.4 of the Criminal Code of 1961 [720 ILCS 5/12-7.4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-7.4));

8) Home invasion (Section 12-11 of the Criminal Code of 1961 [720 ILCS 5/12-11] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-11));

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9) Sexual assault or sexual abuse (Sections 12-13, 12-14, 12-14.1, 12-15, and 12-16 of the Criminal Code of 1961 [720 ILCS 5/12-13, 12-14, 12-14.1, 12-15, and 12-16] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 11-1, 11-2, 11-3, 11-4, 11-5, 12-13, 12-14, 12-15, and 12-16); Ill. Rev. Stat. 1985, ch. 38, pars. 11-1, 11-4, and 11-4.1; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 109, 141, 142, 490, and 491));

10) Abuse or gross neglect of a long-term care facility resident (Section 12-19 of the Criminal Code of 1961 [720 ILCS 5/12-19] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-19));

11) Criminal neglect of an elderly or disabled person (Section 12-21 of the Criminal Code of 1961 [720 ILCS 5/12-21] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 12-21));

12) Endangering the life or health of a child (Section 12-21.6 of the Criminal Code of 1961 [720 ILCS 5/12-21.6] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354); Ill. Rev. Stat. 1961, ch. 38, par. 95));

13) Ritual mutilation, ritualized abuse of a child (Sections 12-32 and 12-33 of the Criminal Code of 1961 [720 ILCS 5/12-32 and 12-33] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 12-32 and 12-33));

14) Theft, retail theft (Sections 16-1 and 16A-3 of the Criminal Code of 1961 [720 ILCS 5/16-1 and 16A-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 16-1 and 16A-3); Ill. Rev. Stat. 1961, ch. 38, pars. Sections 62, 207 to 218, 240 to 244, 246, 253, 254.1, 258, 262, 262a, 273, 290, 291, 301a, 354, 387 to 388b, 389, 393 to 400, 404a to 404c, 438, 492 to 496));

15) Financial exploitation of an elderly or disabled person (Section 16-1.3 of the Criminal Code of 1961 [720 ILCS 5/16-1.3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 16-1.3));

16) Forgery (Section 17-3 of the Criminal Code of 1961 [720 ILCS 5/17-3] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 17-3); Ill. Rev. Stat. 1961, ch. 38, pars. 151 and 277 to 286));

17) Robbery, armed robbery (Sections 18-1 and 18-2 of the Criminal Code of 1961 [720 ILCS 5/18-1 and 18-2] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 18-1 and 18-2));

18) Vehicular hijacking, aggravated vehicular hijacking, aggravated robbery (Sections 18-3, 18-4, and 18-5 of the Criminal Code of 1961 [720 ILCS 5/18-3, 18-4, and 18-5]);

19) Burglary, residential burglary (Sections 19-1 and 19-3 of the Criminal Code of 1961 [720 ILCS 5/19-1 and 19-3] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 19-1 and 19-3); Ill. Rev. Stat. 1961, ch. 38, pars. Sections 84 to 86, 88, and 501));

20) Criminal trespass to a residence (Section 19-4 of the Criminal Code of 1961 [720 ILCS 5/19-4] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 19-4));

21) Arson (Sections 20-1 and 20-1.1 of the Criminal Code of 1961 [720 ILCS 5/20-1 and 20-1.1] (formerly Ill. Rev. Stat. 1991, ch.



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- 38, pars. 20-1 and 20-1.1; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 48 to 53 and 236 to 238));
- 22) 14) Unlawful use of weapons, or aggravated discharge of a firearm, or reckless discharge of a firearm (Sections 24-1.1 and 24-1.2.1 and 24-1.5 of the Criminal Code of 1961 [720 ILCS 5/24-1.1 and 24-1.2, and 24-1.5] (formerly Ill. Rev. Stat. 1991, ch. 38, pars. 24-1 and 24-1.2; Ill. Rev. Stat. 1961, ch. 38, pars. Sections 24-1 and 24-1.2; Ill. Rev. Stat. 1961, ch. 38, and 414g));
- 152, 152a, 155, 155a to 158b, 414a to 414c, 414e, and 414g));
- 23) Armed violence - elements of the offense (Section 33A-2 of the Criminal Code of 1961 [720 ILCS 5/33A-2] (formerly Ill. Rev. Stat. 1991, ch. 38, par. 33A-2));
- 24) Those provided in Section 4 of the Wrongs to Children Act (Section 4 of the Wrongs to Children Act [720 ILCS 150/4] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2354));
- 25) Cruelty to children (Section 53 of the Criminal Jurisprudence Act [720 ILCS 115/53] (formerly Ill. Rev. Stat. 1991, ch. 23, par. 2368));
- 26) 15) Manufacture, delivery or trafficking of cannabis, delivery of cannabis on school grounds, or delivery to person under 18; violation by person under 18 (Sections 5, 5.1, 5.2, 7 and 9 of the Cannabis Control Act [720 ILCS 550/5, 5.1, 5.2, 7 and 9] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 705, 705.1, 705.2, 707, and 709)); or
- 27) 16) Manufacture, delivery or trafficking of controlled substances (Sections 401, 401.1, 404, 405, 405.1, 407 and 407.1 of the Illinois Controlled Substance Act [720 ILCS 570/401, 401.1, 404, 405, 405.1, 407 and 407.1] (formerly Ill. Rev. Stat. 1991, ch. 56 1/2, pars. 1401, 1401.1, 1404, 1405, 1405.1, 1407, and 1407.1)).
- b) The facility shall not knowingly employ or retain any individual after January 1, 1997, in a position with duties involving direct care for residents if that person has been convicted of committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) 16) of this Section unless the applicant, employee or employer obtains a waiver pursuant to subsections (k) and (m) of this Section. (Section 25 of the Health Care Worker Background Check Act)
- c) For the purpose of this Section:
- 1) "Applicant" means an individual seeking employment with a facility who has received a bona fide conditional offer of employment.
  - 2) "Conditional offer of employment" means a bona fide offer of employment by a facility to an applicant, which is contingent upon the receipt of a report from the Department of State Police indicating that the applicant does not have a record of conviction of any of the criminal offenses listed in subsections (a)(1) to (27) 16) of this Section.
  - 3) "Direct care" means the provision of nursing care or assistance with meals, dressing, movement, bathing, or other personal needs

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- or maintenance, or general supervision and oversight of the physical and mental well-being of an individual who is incapable of managing his or her person whether or not a guardian has been appointed for that individual.
- 4) "Initiate" means the obtaining of the authorization for a record check from a student, applicant, or employee. (Section 15 of the Health Care Worker Background Check Act)
- d) Beginning January 1, 1996, when the facility makes a conditional offer of employment to an applicant who is not exempt under subsection (q) of this Section, for a position with duties that involve direct care for residents, the employer shall inquire of the Nurse Aide Registry as to the status of the applicant's Uniform Conviction Information Act (UCIA) criminal history record check. If a UCIA criminal history record check has not been conducted within the last 12 months, the facility must initiate or have initiated on its behalf a UCIA criminal history record check for that applicant. (Section 30(c) of the Health Care Worker Background Act)
- e) The facility shall transmit all necessary information and fees to the Illinois State Police within 10 working days after receipt of the authorization. (Section 15 of the Health Care Worker Background Check Act)
- f) The facility may accept an authentic UCIA criminal history record check that has been conducted within the last 12 months rather than initiating a check as required in subsection (d) of this Section.
- g) The request for a UCIA criminal history record check shall be made as prescribed by the Department of State Police. The applicant or employee must be notified of the following whenever a non-fingerprint UCIA criminal history record check is made:
- 1) That the facility shall request or have requested on its behalf a non-fingerprint-based UCIA criminal history record check pursuant to the Health Care Worker Background Check Act.
  - 2) That the applicant or employee has a right to obtain a copy of the criminal records report, challenge the accuracy and completeness of the report, and request a waiver in accordance with subsection (k) of this Section.
  - 3) That the applicant, if hired conditionally, may be terminated if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) 16) of this Section unless the applicant's identity is validated and it is determined that the applicant or employee does not have a disqualifying criminal history record based on a fingerprint-based records check pursuant to subsection (i) of this Section.
  - 4) That the applicant, if not hired conditionally, shall not be hired if the non-fingerprint-based criminal records report indicates that the applicant has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) 16) of this Section.

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†16† of this Section unless the applicant's record is cleared based on a fingerprint records check pursuant to subsection (i) of this Section.

- 5) That the employee may be terminated if the criminal records report indicates that the employee has a record of conviction of any of the criminal offenses enumerated in subsections (a)(1) to (27) †16† of this Section unless the employee's record is cleared based on a fingerprint-based records check pursuant to subsection (i) of this Section. (Section 30(e) and (f) of the Health Care Worker Background Check Act)

- h) A facility may conditionally employ an applicant to provide direct care for up to three months pending the results of a UCIA criminal history record check. (Section 30(g) of the Health Care Worker Background Check Act)

- i) An applicant or employee whose non-fingerprint-based UCIA criminal history record check indicates a conviction for committing or attempting to commit one or more of the offenses listed in subsections (a)(1) to (27) †16† of this Section may request that the facility or its designee commence a fingerprint UCIA criminal records check by submitting any necessary fees and information in a form and manner prescribed by the Department of State Police. (Section 35 of the Health Care Worker Background Check Act)

- j) A facility having actual knowledge that an employee has been convicted of committing or attempting to commit one of the offenses enumerated in Section 25 of the Act must initiate a fingerprint-based background check within 10 working days after acquiring that knowledge. The facility may continue to employ that individual in a direct care position, may reassign that individual to a non-direct care position, or may suspend the individual until the results of the fingerprint-based background check are received. (Section 30(d) of the Health Care Worker Background Check Act)

- k) An applicant, employee or employer may request a waiver to subsection (a) or (b) of this Section by submitting the following to the Department within five working days after the receipt of the criminal records report:

- 1) A completed fingerprint-based UCIA criminal records check form (Section 40(a) of the Health Care Worker Background Check Act) (which the Department will forward to the Illinois State Police); and
  - 2) A certified check, money order or facility check made payable to the Department of State Police for the amount of money necessary to initiate a fingerprint-based UCIA criminal records check.
- l) The Department may accept the results of the fingerprint-based UCIA criminal records check instead of the items required by subsections (k)(1) and (2) above. (Section 40(a-5) of the Health Care Worker Background Check Act)
  - m) The Department may grant a waiver based on mitigating circumstances, which may include:

- 1) The age at which the crime was committed;
- 2) The circumstances surrounding the crime;
- 3) The length of time since the conviction;
- 4) The applicant's or employee's criminal history since the conviction;
- 5) The applicant's or employee's work history;
- 6) The applicant's or employee's current employment references;
- 7) The applicant's or employee's character references;
- 8) Nurse Aide Registry records; and
- 9) Other evidence demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents. (Section 40(b) of the Health Care Worker Background Check Act)

- n) An individual may not be employed in a direct care position during the pendency of a waiver request. (Section 10(d) of the Health Care Worker Background Check Act)

- o) A facility is not obligated to employ or offer permanent employment to an applicant, or to retain an employee who is granted a waiver. (Section 40(f) of the Health Care Worker Background Check Act)

- p) A facility may retain the individual in a direct care position if the individual presents clear and convincing evidence to the facility that the non-fingerprint-based criminal records report is invalid and if there is a good faith belief on the part of the employer that the individual did not commit an offense listed in subsections (a)(1) to (27) †16† of this Section, pending positive verification through a fingerprint-based criminal records check. Such evidence may include, but not be limited to:

- 1) certified court records;
- 2) written verification from the State's Attorney's office that prosecuted the conviction at issue;
- 3) written verification of employment during the time period during which the crime was committed or during the incarceration period stated in the report;

- 4) a signed affidavit from the individual concerning the validity of the report; or

- 5) documentation from a local law enforcement agency that the individual was not convicted of a disqualifying crime.

- q) This Section shall not apply to:

- 1) An individual who is licensed by the Department of Professional Regulation or the Department of Public Health under another law of this State;
- 2) An individual employed or retained by a health care employer for whom a criminal background check is required by another law of this State; or
- 3) A student in a licensed health care field including, but not limited to, a student nurse, a physical therapy student, or a respiratory care student unless he or she is employed by a health

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*care employer in a position with duties involving direct care for residents.* (Section 20 of the Health Care Worker Background Check Act)

1) An employer need not initiate an additional criminal background check for an employee if the employer initiated a criminal background check for the employee after January 1, 1996 and prior to January 1, 1998. This subsection applies only to persons employed prior to January 1, 1998. Any person newly employed on or after January 1, 1998 must receive a background check as required by Section 30 of the Health Care Worker Background Check Act. (Section 25.1 of the Health Care Worker Background Check Act)

s) † The facility must send a copy of the results of the UCIA criminal history record check to the State Nurse Aide Registry for those individuals who are on the Registry. (Section 30(b) of the Health Care Worker Background Check Act) The facility shall include the individual's Social Security number on the criminal history record check results.

t) † The facility shall retain on file for a period of 5 years records of criminal records requests for all employees. The facility shall retain the results of the UCIA criminal history records check and waiver, if appropriate, for the duration of the individual's employment. The files shall be subject to inspection by the Department. A fine of \$500 shall be imposed for failure to maintain these records. (Section 50 of the Health Care Worker Background Check Act)

u) † The facility shall maintain a copy of the employee's criminal history record check results and waiver, if applicable, in the personnel file or other secure location accessible to the Department.

(Source: Amended at 22<sup>nd</sup> Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

## NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Pay Plan

2) Code Citation: 80 Ill. Adm. Code 310

3) Section Numbers: Adopted Action:  
310.230 Amended  
310.270 Amended  
310.280 Amended

4) Statutory Authority: Authorized by Section 8 and 8a of the Personnel Code [20 ILCS 415/8 and 8a].

5) Effective Date of Amendment: March 12, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Does this amendment contain incorporation by reference? No

8) Date filed in Agency's Principal Office: March 12, 1998

9) Notice of Proposal Published in Illinois Register: November 14, 1997; Issue #46; 21 Ill. Reg. 14648. Notice of Correction to Section 310.230: December 1, 1997; Issue #48; 21 Ill. Reg. 15279

10) Has JCAR issued a Statement of Objection to this rule? No

11) Difference between proposal and final version: Notice of Correction to Section 310.230 was filed to change the minimum wage rate for the Student Worker from \$4.75 to \$5.15.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will these Amendments replace an emergency amendment currently in effect? No

14) Are there any amendments pending to this part? No

15) Summary and Purpose of Amendment: In Section 310.230, Part-Time Daily or Hourly Special Services Rate, the hourly and daily rate changes pertained to the FLSA minimum wage increase (\$4.75 to \$5.15) that became effective September 1, 1997.

The minimum wage for the following titles were upgraded to \$5.15 per hour and/or \$39.00 per day: Building/Grounds Laborer, Building/Grounds Lead I, Building/Grounds Maintenance Worker, Chaplain I, Chemist I, Conservation/Historic Preservation Worker, Educator, Educator Aide, Janitor I, Labor Maintenance Lead Worker, Labor Relations Investigator,



## DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

## NOTICE OF ADOPTED AMENDMENTS

Laborer (Maintenance), Maintenance Worker, Psychologist I, Social Workers II and III, and Student Worker.

The minimum daily wage for the Recreation Worker I was upgraded to \$40.00 to be in alignment with the present hourly rate. The Recreation Worker I's maximum daily rate was revised from \$40.00 to \$45.00.

In Section 310.270, Legislated and Contracted Rate, the Arbitrator's annual salary was revised from \$79,999 to \$81,509.

In Section 310.280, Designated Rate, the following updates reflect changes already approved by the Governor:

In the Department of Children and Family Services, the Private Secretary II position was deleted.

In the Department of Commerce and Community Affairs, the Public Service Administrator's annual salary was revised from \$65,592 to \$69,528. The Position Codes for the Economic Development Representative II and Public Information Officer IV were changed to 12932-42-35-110-10-02 and 37004-42-00-000-01-02, respectively.

The Department of Mental Health and Developmental Disabilities was changed to the Department of Human Services which is the successor of the former agency. A Medical Administrator I, Option D was added with the annual salary of \$142,368. The position code for another Medical Administrator I, Option D, was changed to 26401-10-81-903-10-01. The Medical Administrator II, Option D and Private Secretary II positions were deleted. Also, a Senior Public Service Administrator was added with the annual salary of \$105,480.

In the Department of Natural Resources, an Administrative Assistant II was added with the annual salary of \$50,520.

In the Department of Revenue, the Public Service Administrator position was deleted.

In the Department of State Police, the Senior Public Service Administrator's annual salary was changed to \$99,214.

16) Information and questions regarding this adopted amendment shall be directed to:

Mr. Michael Murphy  
Department of Central Management Services  
Division of Technical Services  
504 William G. Stratton Building  
Springfield, IL 62706

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217/782-5601

The full text of the Adopted Amendment(s) begins on the next page:

## DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

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TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES  
SUBTITLE B: PERSONNEL RULES, PAY PLANS, AND  
POSITION CLASSIFICATIONS  
CHAPTER I: DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

PART 310  
PAY PLAN

## SUBPART A: NARRATIVE

Section  
310.20 Policy and Responsibilities  
310.30 Jurisdiction  
310.40 Pay Schedules  
310.50 Definitions  
310.60 Conversion of Base Salary to Pay Period Units  
310.70 Conversion of Base Salary to Daily or Hourly Equivalents  
310.80 Increases in Pay  
310.90 Decreases in Pay  
310.100 Other Pay Provisions  
310.110 Implementation of Pay Plan Changes for Fiscal Year 1998  
310.120 Interpretation and Application of Pay Plan  
310.130 Effective Date  
310.140 Reinstitution of Within Grade Salary Increases  
310.150 Fiscal Year 1984 Pay Changes in Schedule of Salary Grades, Effective July 1, 1984 (Repealed)

## SUBPART B: SCHEDULE OF RATES

Section  
310.205 Introduction  
310.210 Prevailing Rate  
310.220 Negotiated Rate  
310.230 Part-Time Daily or Hourly Special Services Rate  
310.240 Hourly Rate  
310.250 Member, Patient and Inmate Rate  
310.260 Trainee Rate  
310.270 Legislated and Contracted Rate  
310.280 Designated Rate  
310.290 Out-of-State or Foreign Service Rate  
310.300 Educator Schedule for RC-063 and HR-010  
310.310 Physician Specialist Rate  
310.320 Annual Compensation Ranges for Executive Director and Assistant Executive Director, State Board of Elections  
310.330 Excluded Classes Rate (Repealed)

## SUBPART C: MERIT COMPENSATION SYSTEM

## DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

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Section  
310.410 Jurisdiction  
310.420 Objectives  
310.430 Responsibilities  
310.440 Merit Compensation Salary Schedule  
310.450 Procedures for Determining Annual Merit Increases  
310.455 Intermittent Merit Increase  
310.456 Merit Zone (Repealed)  
310.460 Other Pay Increases  
310.470 Adjustment  
310.480 Decreases in Pay  
310.490 Other Pay Provisions  
310.495 Broad-Band Pay Range Classes  
310.500 Definitions  
310.510 Conversion of Base Salary to Pay Period Units  
310.520 Conversion of Base Salary to Daily or Hourly Equivalents  
310.530 Implementation  
310.540 Annual Merit Increase Guidechart for Fiscal Year 1998  
310.550 Fiscal Year 1985 Pay Changes in Merit Compensation System, effective July 1, 1984 (Repealed)

## APPENDIX A

Table A Negotiated Rates of Pay  
HR-190 (Department of Central Management Services - State of Illinois Building - SEIU)  
TABLE AA NR-916 (Department of Natural Resources, Teamsters)  
TABLE B HR-200 (Department of Labor - Chicago, Illinois - SEIU)  
TABLE C RC-069 (Firefighters, AFSCME) (Repealed)  
TABLE D HR-001 (Teamsters Local #726)  
TABLE E RC-026 (Teamsters Local #330)  
TABLE F RC-004 (Teamsters Local #25)  
TABLE G RC-001 (Automotive Mechanics, IFPE)  
TABLE H RC-006 (Corrections Employees, AFSCME)  
TABLE I RC-009 (Institutional Employees, AFSCME)  
TABLE J RC-014 (Clerical Employees, AFSCME)  
TABLE K RC-023 (Registered Nurses, INA)  
TABLE L RC-008 (Boilermakers)  
TABLE M RC-110 (Conservation Police Lodge)  
TABLE N RC-010 (Professional Legal Unit, AFSCME)  
TABLE O RC-028 (Paraprofessional Human Services Employees, AFSCME)  
TABLE P RC-029 (Paraprofessional Investigatory and Law Enforcement Employees, IFPE)  
TABLE Q RC-033 (Meat Inspectors, IFPE)  
TABLE R RC-042 (Residual Maintenance Workers, AFSCME)  
TABLE S HR-012 (Fair Employment Practices Employees, SEIU)  
TABLE T HR-010 (Teachers of Deaf, IFT)  
TABLE U HR-010 (Teachers of Deaf, Extracurricular Paid Activities)  
TABLE V CU-500 (Corrections, Meet and Confer Employees)  
TABLE W RC-062 (Technical Employees, AFSCME)

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TABLE X	RC-063 (Professional Employees, AFSCME)
TABLE Y	RC-063 (Educators, AFSCME)
TABLE Z	RC-063 (Physicians, AFSCME)
APPENDIX B	Schedule of Salary Grades - Monthly Rates of Pay for Fiscal Year 1998
APPENDIX C	Medical Administrator Rates for Fiscal Year 1998
APPENDIX D	Merit Compensation System Salary Schedule for Fiscal Year 1998
APPENDIX E	Teaching Salary Schedule (Repealed)
APPENDIX F	Physician and Physician Specialist Salary Schedule (Repealed)
APPENDIX G	Broad-Band Pay Range Classes Salary Schedule for Fiscal Year 1998

AUTHORITY: Implementing and authorized by Sections 8 and 8a of the Personnel Code [20 ILCS 415/8 and 8a].

SOURCE: Filed June 28, 1967; codified at 8 Ill. Reg. 1558; emergency amendment at 8 Ill. Reg. 1990, effective January 31, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 2440, effective February 15, 1984; emergency amendment at 8 Ill. Reg. 3348, effective March 5, 1984, for a maximum of 150 days; emergency amendment at 8 Ill. Reg. 4249, effective March 16, 1984, for a maximum of 150 days; emergency amendment at 8 Ill. Reg. 5704, effective April 16, 1984, for a maximum of 150 days; emergency amendment at 8 Ill. Reg. 7290, effective May 11, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 11299, effective June 25, 1984; emergency amendment at 8 Ill. Reg. 12616, effective July 1, 1984, for a maximum of 150 days; emergency amendment at 8 Ill. Reg. 15007, effective August 6, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 15367, effective August 13, 1984; emergency amendment at 8 Ill. Reg. 21310, effective October 10, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 21544, effective October 24, 1984; amended at 8 Ill. Reg. 22844, effective November 14, 1984; emergency amendment at 9 Ill. Reg. 1134, effective January 16, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 1320, effective January 23, 1985; amended at 9 Ill. Reg. 3681, effective March 12, 1985; emergency amendment at 9 Ill. Reg. 4163, effective March 15, 1985, for a maximum of 150 days; emergency amendment at 9 Ill. Reg. 9231, effective May 31, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 9420, effective June 7, 1985; amended at 9 Ill. Reg. 10663, effective July 1, 1985; emergency amendment at 9 Ill. Reg. 15043, effective September 24, 1985, for a maximum of 150 days; peremptory amendment at 10 Ill. Reg. 3325, effective January 22, 1986; amended at 10 Ill. Reg. 3230, effective January 24, 1986; emergency amendment at 10 Ill. Reg. 8904, effective May 13, 1986, for a maximum of 150 days; peremptory amendment at 10 Ill. Reg. 8928, effective May 13, 1986; emergency amendment at 10 Ill. Reg. 12090, effective June 30, 1986, for a maximum of 150 days; peremptory amendment at 10 Ill. Reg. 13675, effective July 31, 1986; peremptory amendment at 10 Ill. Reg. 14867, effective August 26, 1986; amended at 10 Ill. Reg. 15567, effective September 17, 1986; emergency amendment at 10 Ill. Reg. 17765, effective September 30, 1986, for a maximum of 150 days; peremptory amendment at 10 Ill. Reg. 19132, effective October 28, 1986; peremptory amendment at 10 Ill. Reg. 21097, effective December 9, 1986; amended at 11 Ill.

Reg. 648, effective December 22, 1986; peremptory amendment at 11 Ill. Reg. 3363, effective February 3, 1987; peremptory amendment at 11 Ill. Reg. 4388, effective February 27, 1987; peremptory amendment at 11 Ill. Reg. 6291, effective March 23, 1987; amended at 11 Ill. Reg. 5901, effective March 24, 1987; emergency amendment at 11 Ill. Reg. 8787, effective April 15, 1987, for a maximum of 150 days; emergency amendment at 11 Ill. Reg. 11830, effective July 1, 1987, for a maximum of 150 days; peremptory amendment at 11 Ill. Reg. 13675, effective July 29, 1987; amended at 11 Ill. Reg. 14984, effective August 27, 1987; peremptory amendment at 11 Ill. Reg. 15273, effective September 1, 1987; peremptory amendment 11 Ill. Reg. 17919, effective October 19, 1987; peremptory amendment at 11 Ill. Reg. 19812, effective November 19, 1987; emergency amendment at 11 Ill. Reg. 20664, effective December 4, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 20778, effective December 11, 1987; peremptory amendment at 12 Ill. Reg. 3811, effective January 27, 1988; peremptory amendment at 12 Ill. Reg. 5459, effective March 3, 1988; amended at 12 Ill. Reg. 6073, effective March 21, 1988; peremptory amendment at 12 Ill. Reg. 7783, effective April 14, 1988; emergency amendment at 12 Ill. Reg. 7734, effective April 15, 1988, for a maximum of 150 days; peremptory amendment at 12 Ill. Reg. 8135, effective April 22, 1988; peremptory amendment at 12 Ill. Reg. 9745, effective May 23, 1988; emergency amendment at 12 Ill. Reg. 11778, effective July 1, 1988, for a maximum of 150 days; emergency amendment at 12 Ill. Reg. 12895, effective July 18, 1988, for a maximum of 150 days; peremptory amendment at 12 Ill. Reg. 13306, effective July 27, 1988; corrected at 12 Ill. Reg. 13359; amended at 12 Ill. Reg. 14630, effective September 6, 1988; amended at 12 Ill. Reg. 20449, effective November 28, 1988; peremptory amendment at 12 Ill. Reg. 20584, effective November 28, 1988; peremptory amendment at 13 Ill. Reg. 8080, effective May 10, 1989; amended at 13 Ill. Reg. 8849, effective May 30, 1989; peremptory amendment at 13 Ill. Reg. 8970, effective May 26, 1989; emergency amendment at 13 Ill. Reg. 10967, effective June 20, 1989, for a maximum of 150 days; emergency amendment expired on November 17, 1989; amended at 13 Ill. Reg. 11451, effective June 28, 1989; emergency amendment at 13 Ill. Reg. 11854, effective July 1, 1989, for a maximum of 150 days; corrected at 13 Ill. Reg. 12647; peremptory amendment at 13 Ill. Reg. 12887, effective July 24, 1989; amended at 13 Ill. Reg. 16950, effective October 20, 1989; amended at 13 Ill. Reg. 19221, effective December 12, 1989; amended at 14 Ill. Reg. 615, effective January 2, 1990; peremptory amendment at 14 Ill. Reg. 1627, effective January 11, 1990; amended at 14 Ill. Reg. 4455, effective March 12, 1990; peremptory amendment at 14 Ill. Reg. 7652, effective May 7, 1990; amended at 14 Ill. Reg. 10002, effective June 11, 1990; emergency amendment at 14 Ill. Reg. 11330, effective June 29, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 14361, effective August 24, 1990; emergency amendment at 14 Ill. Reg. 15570, effective September 11, 1990, for a maximum of 150 days; emergency amendment expired on February 8, 1991; corrected at 14 Ill. Reg. 16092; peremptory amendment at 14 Ill. Reg. 17098, effective September 26, 1990; amended at 14 Ill. Reg. 17189, effective October 2, 1990; amended at 14 Ill. Reg. 17189, effective October 19, 1990; amended at 14 Ill. Reg. 18719, effective November 13, 1990; peremptory amendment at 14 Ill. Reg. 18854, effective November 13, 1990; peremptory amendment at 15 Ill. Reg. 663,

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effective January 7, 1991; amended at 15 Ill. Reg. 3296, effective February 14, 1991; amended at 15 Ill. Reg. 4401, effective March 11, 1991; peremptory amendment at 15 Ill. Reg. 5100, effective March 20, 1991; peremptory amendment at 15 Ill. Reg. 5465, effective April 2, 1991; emergency amendment at 15 Ill. Reg. 10485, effective July 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 11080, effective July 19, 1991; amended at 15 Ill. Reg. 13080, effective August 21, 1991; amended at 15 Ill. Reg. 14210, effective September 23, 1991; emergency amendment at 16 Ill. Reg. 711, effective December 26, 1991, for a maximum of 150 days; amended at 16 Ill. Reg. 3450, effective February 20, 1992; peremptory amendment at 16 Ill. Reg. 5068, effective March 11, 1992; peremptory amendment at 16 Ill. Reg. 7056, effective April 20, 1992; emergency amendment at 16 Ill. Reg. 8239, effective May 19, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 8382, effective May 26, 1992; emergency amendment at 16 Ill. Reg. 13950, effective August 19, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 14452, effective September 4, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 238, effective December 23, 1992; peremptory amendment at 17 Ill. Reg. 498, effective December 18, 1992; amended at 17 Ill. Reg. 590, effective January 4, 1993; amended at 17 Ill. Reg. 1819, effective February 2, 1993; amended at 17 Ill. Reg. 6441, effective April 8, 1993; emergency amendment at 17 Ill. Reg. 12900, effective July 22, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 13409, effective July 29, 1993; emergency amendment at 17 Ill. Reg. 13789, effective August 9, 1993, for a maximum of 150 days; emergency amendment at 17 Ill. Reg. 14666, effective August 26, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 19103, effective October 25, 1993; emergency amendment at 17 Ill. Reg. 21858, effective December 1, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 22514, effective December 15, 1993; amended at 18 Ill. Reg. 227, effective December 17, 1993; amended at 18 Ill. Reg. 1107, effective January 18, 1994; amended at 18 Ill. Reg. 5146, effective March 21, 1994; peremptory amendment at 18 Ill. Reg. 9562, effective June 13, 1994; emergency amendment at 18 Ill. Reg. 11299, effective July 1, 1994, for a maximum of 150 days; peremptory amendment at 18 Ill. Reg. 13476, effective August 17, 1994; emergency amendment at 18 Ill. Reg. 14417, effective September 9, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 16545, effective October 31, 1994; peremptory amendment at 18 Ill. Reg. 16708, effective October 28, 1994; amended at 18 Ill. Reg. 17191, effective November 21, 1994; amended at 19 Ill. Reg. 1024, effective January 24, 1995; peremptory amendment at 19 Ill. Reg. 2481, effective February 17, 1995; peremptory amendment at 19 Ill. Reg. 3073, effective February 17, 1995; amended at 19 Ill. Reg. 3456, effective March 7, 1995; peremptory amendment at 19 Ill. Reg. 5145, effective March 14, 1995; amended at 19 Ill. Reg. 6452, effective May 2, 1995; peremptory amendment at 19 Ill. Reg. 6688, effective May 1, 1995; amended at 19 Ill. Reg. 7841, effective June 1, 1995; amended at 19 Ill. Reg. 8156, effective June 12, 1995; amended at 19 Ill. Reg. 9096, effective June 27, 1995; emergency amendment at 19 Ill. Reg. 11954, effective August 1, 1995, for a maximum of 150 days; peremptory amendment at 19 Ill. Reg. 13979, effective September 19, 1995; peremptory amendment at 19 Ill. Reg. 15103, effective October 12, 1995; amended at 19 Ill. Reg. 16160, effective November 28, 1995; amended at 20 Ill. Reg. 308, effective December

22, 1995; emergency amendment at 20 Ill. Reg. 4060, effective February 27, 1996, for a maximum of 150 days; peremptory amendment at 20 Ill. Reg. 6334, effective April 22, 1996; peremptory amendment at 20 Ill. Reg. 7434, effective May 14, 1996; amended at 20 Ill. Reg. 8301, effective June 11, 1996; amended at 20 Ill. Reg. 8657, effective June 20, 1996; amended at 20 Ill. Reg. 9006, effective June 26, 1996; amended at 20 Ill. Reg. 9925, effective July 10, 1996; emergency amendment at 20 Ill. Reg. 10213, effective July 15, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 10841, effective August 5, 1996; peremptory amendment at 20 Ill. Reg. 13408, effective September 24, 1996; amended at 20 Ill. Reg. 15018, effective November 7, 1996; peremptory amendment at 20 Ill. Reg. 15092, effective November 7, 1996; emergency amendment at 21 Ill. Reg. 1023, effective January 6, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 1629, effective January 22, 1997; amended at 21 Ill. Reg. 5144, effective April 15, 1997; amended at 21 Ill. Reg. 6444, effective May 15, 1997; amended at 21 Ill. Reg. 7118, effective June 3, 1997; emergency amendment at 21 Ill. Reg. 10061, effective July 21, 1997, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 12859, effective September 8, 1997, for a maximum of 150 days; peremptory amendment at 21 Ill. Reg. 14267, effective October 14, 1997; peremptory amendment at 21 Ill. Reg. 14589, effective October 15, 1997; peremptory amendment at 21 Ill. Reg. 15030, effective November 10, 1997; amended at 21 Ill. Reg. 16344, effective December 9, 1997; peremptory amendment at 21 Ill. Reg. 16465, effective December 4, 1997; peremptory amendment at 21 Ill. Reg. 17167, effective December 9, 1997; peremptory amendment at 22 Ill. Reg. 1593, effective December 22, 1997; amended at 22 Ill. Reg. 2580, effective January 14, 1998; peremptory amendment at 22 Ill. Reg. 4326, effective February 13, 1998; peremptory amendment at 22 Ill. Reg. 5108, effective February 26, 1998; peremptory amendment at 22 Ill. Reg. 5749, effective March 3, 1998; amended at 22 Ill. Reg. ~~6204~~ **6204**, effective ~~-----~~ **MAR 12 1998**.

## SUPPORT B: SCHEDULE OF RATES

## Section 310.230 Part-Time Daily or Hourly Special Services Rate

The rate of pay as approved by the Director of Central Management Services for persons employed on a consultative or part-time basis requiring irregular hours of work shall be as listed below, except the total compensation of an employee in any given month shall not exceed the monthly rate of Step 5 of the salary grade for the title as shown in the Schedule of Salary Grades (Appendix B) of this Part if the class title is subject to the Schedule of Salary Grades, or Step 5 of the negotiated salary range for classes of positions shown in Section 310.220, Subpart B, Schedule of Rates, or 75% of the maximum rate of those classes of positions subject to the provisions of the Merit Compensation System, Subpart C of this Pay Plan.

Account Technician II

11.00 to 14.08 (hourly)

Apiary Inspector

83 to 106 (daily)

Building/Grounds Laborer

5.154-75 to 6.00 (hourly)

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Building/Grounds Lead I	5.154-75 to 7.00 (hourly)
Building/Grounds Lead II	5.25 to 8.00 (hourly)
Building/Grounds Maintenance Worker	5.155-00 to 6.00 (hourly)
Chaplain I	3936 to 70 (daily)
Chemist I	3936 to 45 (daily)
Conservation/Historic Preservation Worker	5.154-75 to 6.50 (hourly)
Conservation/Historic Preservation Worker (2nd season -- site interpretation)	5.154-75 to 6.50 (hourly)
Conservation/Historic Preservation Worker (3rd season -- site interpretation)	5.154-78 to 6.50 (hourly)
Dentist I	70 to 150 (daily)
Dentist II	100 to 185 (daily)
Educator	3936 to 85 (daily)
Educator Aide	3936 (daily)
Guard II	67 to 84 (daily)
Guard III	75 to 96 (daily)
Hearing and Speech Advanced Specialist	15 to 30 (hourly)
Hearings Referee	75 to 200 (daily)
Janitor I	5.154-75 to 5.30 (hourly)
Labor Maintenance Lead Worker	5.155-00 to 6.00 (hourly)
Labor Relations Investigator	3936 to 70 (daily)
Laborer (Maintenance)	5.154-75 to 5.70 (hourly)
Maintenance Worker	5.154-75 to 5.00 (hourly)
Occupational Therapist	40 to 160 (daily)
Program Coordinator	8.12 to 10.71 (hourly)
Office Aide	60 to 80 (daily)
Office Assistant	9.16 to 12.36 (hourly)
Office Associate	68 to 93 (daily)
Office Clerk	9.80 to 13.44 (hourly)
Optometrist	73 to 101 (daily)
Physician	8.58 to 11.49 (hourly)
Physician Specialist (A)	64 to 86 (daily)
Physician Specialist (B)	15 to 35 (hourly)
Physician Specialist (C)	50 to 160 (daily)
Physician Specialist (D)	100 to 300 (daily)
	20 to 60 (hourly)
	100 to 325 (daily)
	20 to 70 (hourly)
	100 to 350 (daily)
	20 to 105 (hourly)
	100 to 360 (daily)
	20 to 115 (hourly)
	100 to 370 (daily)

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Podiatrist	50 to 125 (daily)
Psychologist I	3936 to 80 (daily)
Psychologist II	40 to 125 (daily)
Psychologist III	40 to 150 (daily)
Recreation Worker I	5.33 (hourly)
Registered Nurse I	36- <del>40</del> 40 to 45 (daily)
Registered Nurse I (2nd or 3rd shift)	39 to 54 (daily)
Registered Nurse I (Cook County)	41 to 56 (daily)
Registered Nurse I (Cook County - 2nd or 3rd shift)	43 to 58 (daily)
Registered Nurse II	44 to 59 (daily)
Registered Nurse II (2nd or 3rd shift)	43 to 58 (daily)
Registered Nurse II (Cook County)	44 to 59 (daily)
Registered Nurse II (Cook County - 2nd or 3rd shift)	43 to 58 (daily)
Revenue Tax Specialist I	45 to 60 (daily)
Social Worker II	47 to 62 (daily)
Social Worker III	11.56 to 16.16 (hourly)
Student Worker	86 to 122 (daily)
Technical Advisor II	3936 to 75 (daily)
Technical Advisor III	3936 to 80 (daily)
Veterinarian II	5.154-75 to 8.00 (hourly)
	32 to 35 (hourly)
	32 to 60 (hourly)
	95 to 130 (daily)
(Source: Amended at 22 Ill. Reg. 6204 = , effective MAR 12 1998)	

## Section 310.270 Legislated and Contracted Rate

The rate of pay for employees occupying positions which require payment in accordance with specified rates set forth in legislation or by contract. The positions and rates of pay in this Section are as follows:

## Annual Salary

81,509  
79,999

## Arbitrator

When an Arbitrator is serving as an acting Commissioner of the Illinois Industrial Commission, the appropriate rate will be the same as the rate set for a Commissioner.

(Source: Amended at 22 Ill. Reg. 6204 = , effective MAR 12 1998)

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## Section 310.280 Designated Rate

The rate of pay for a specific position or class of positions where it is deemed desirable to exclude such from the other requirements of this Pay Plan shall be only as designated by the Governor.

Department-of-Children-&-Family-ServicesPrivate-Secretary-II

{Pos.-No.-34202-16-00-000-03-30}

Annual-Salary

43,452

Department of Commerce & Community AffairsEconomic Development Representative II

{Pos. No. 12932-42-35-110-10-02}

{Pos.-No.-12932-42-35-140-30-01}

Annual Salary

51,912

Private Secretary II

Pos. No. 34202-42-00-000-01-02)

Annual Salary

43,164

Public Information Officer IV

{Pos.-No.-37004-42-00-073-10-01}

{Pos. No. 37004-42-00-005-10-01}

Annual Salary

56,184

Public Service Administrator

(Pos. No. 37015-42-35-140-20-01)

Annual Salary

69,528<sup>65</sup>592

Illinois Industrial CommissionPrivate Secretary II

(Pos. No. 34202-50-37-000-00-01

Annual Salary

48,852

Department of InsuranceSenior Public Service Administrator

(Pos. No. 40070-14-00-000-00-06)

Annual Salary

97,100

Department-of-Mental-Health-and-Developmental-DisabilitiesDepartment of Human ServicesMedical Administrator I, Option D

{Pos. No. 26401-10-79-006-00-21}

Annual Salary

142,388

Medical Administrator I, Option D

{Pos. No. 26401-10-81-903-10-22}

Annual Salary

131,250

{Pos.-No.-26401-22-59-903-10-02}

Medical-Administrator-III-Option-B

Annual-Salary

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{Pos.-No.-26403-22-66-260-00-01}

142,000

Private-Secretary-II

{Pos.-No.-34202-22-15-000-00-01}

Annual-Salary

41,004

Senior Public Service Administrator

{Pos. No. 40070-10-81-920-00-21}

Annual Salary

105,480

Department of Natural ResourcesAdministrative Assistant II

{Pos. No. 00502-12-30-000-20-01}

Annual Salary

50,520

Department-of-RevenuePublic-Service-Administrator

{Pos.-No.-37015-25-12-000-00-01}

Annual-Salary

69,744

Department of State PoliceSenior Public Service Administrator

(Pos. No. 40070-21-10-000-00-01)

Annual Salary

99,214

057153

(Source: Amended at 22 Ill. Reg. 0204, effective  
MAR 12 1996)



## ENVIRONMENTAL PROTECTION AGENCY

## NOTICE OF ADOPTED RULES

1) Heading of the Part: Regulatory Innovation Projects

2) Code Citation: 35 Ill. Adm. Code 187

Section Numbers	Proposed Action
187.100	New
187.102	New
187.104	New
187.106	New
187.108	New
187.200	New
187.202	New
187.300	New
187.302	New
187.304	New
187.400	New
187.402	New
187.404	New
187.406	New
187.408	New
187.410	New
187.412	New
187.414	New
187.416	New

4) Statutory Authority: 415 ILCS 5/52.3

5) Effective Date of Rules: March 20, 1998

6) Does this rulemaking contain an automatic repeal date? No

7) Does this rule contain incorporations by reference? No

8) Date filed in Agency's Principal Office: March 19, 1998

9) Date Notice of Proposed Rules was Published in Illinois Register: October 3, 1997, at 21 Ill. Reg. 13224, Issue 40.

10) Has JCAR issued a Statement of Objections to these rule(s)? No

11) Differences between proposal and final version: The following changes have been made in the final version of the rules:

A. This Part was originally numbered as "Part 185". Subsequent to First Notice publication and hearing on this matter, it was discovered that part number 185 was already in use. The Part has been renumbered as "Part 187" pursuant to agreement among the Code Division of the Secretary of State, JCAR and the Agency. All references to Part "185"

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or Section "185" in the table of contents or within the rule have been renumbered as "187".

B. In Section 187.104(e), replaced the word "agreement" with the defined term "EMSA" as follows:

e) Nothing in this Section shall limit the authority or ability of a State's Attorney or the Attorney General to proceed pursuant to Section 43(a) of the Act, or to enforce Section 44 or 44.1 of the Act, except that for the purposes of enforcement under Section 43(a), 44 or 44.1, an EMSA agreement shall be deemed to be a permit issued under the Act to engage in activities authorized under the EMSA agreement. (Section 52.3-4(e) of the Act)

C. In Section 187.200(b), replaced the term "agreement" with "EMSA", deleted the phrase "rejection shall not be" and replaced it with the following underscored language that tracks the language in Section 52.3-1(c) of the Environmental Protection Act [415 ILCS 5/52.3-1(c)]:

b) The Agency may reject a proposed pilot project at any time prior to execution of an agreement EMSA, and any ~~rejection shall not be~~ decision by the Agency to reject a proposed pilot project is not appealable. (See Section 52.3-1(c) of the Act.)

D. In Section 187.200(c), before the end of the first sentence, added the following underscored language:

c) EMSAs under this Part must be initially executed on or before December 31, 2001, and shall be for a term not to exceed 5 years. An EMSA executed on or before December 31, 2001, may, in the Agency's discretion, be renewed for additional periods not to exceed 5 years per renewal.

E. In Section 187.202(b)(1), deleted the phrase "the subject of a current" and added the following phrase "currently subject to an". Also, deleted the following language ", or has been the subject of an environmental enforcement action under the Act or regulations promulgated thereunder within the preceding year" as follows:

(b)(1) Any person that is ~~the subject of a current~~ currently subject to an environmental enforcement action under the Act or regulations promulgated thereunder, ~~or has been the subject of an environmental enforcement action under the Act or regulations promulgated thereunder within the preceding year;~~

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F. In Section 187.202(c) added the following underscored language after the phrase "limited to" as follows:

(c) In determining whether a person is eligible to participate in the pilot program, the Agency may consider the person's past environmental performance, including, but not limited to, pre-enforcement and enforcement actions and previously adjudicated violations.

G. In Section 187.402(b)(10), added the phrase "process by which" after the word "the" and deleted the phrase "manner in which" as follows:

1) An explanation of the process by which manner-in-which statutory or regulatory environmental requirements that become applicable to the pilot project or its sponsor, owner or operator after the effective date of the EMSA shall be addressed.

H. Section 187.402 had several subsection lettering/designation errors which were corrected; there were three subsections lettered (b) and three subsections lettered (c). The second subsection lettered (b) was redesignated as subsection (d); the second subsection lettered (c) was redesignated as subsection (e); the third subsection lettered (b) was redesignated subsection (f); and the third subsection lettered (c) was redesignated subsection (g).

I. In Section 187.402, newly redesignated section (d), the phrase "on a single date" was added after the word "publication" as follows:

b d) A sponsor shall provide notice, by publication on a single date in a newspaper of general circulation in the area in which the proposed pilot project is located, that it has submitted an initial draft EMSA for consideration by the Agency. Such notice shall include a statement that interested persons may contact the sponsor to request that they be named to the stakeholder group in the development and implementation of the proposed pilot project. The notice shall be provided within 7 calendar days from the date the initial draft EMSA has been submitted to the Agency in accordance with subsection (b) of this Section.

J. Grammatical corrections were made to Section 187.406(a); the word "only" was deleted and inserted after the term "EMSA" as follows:

a) In accordance with Section 52.3-1 of the Act, the Agency may only approve an EMSA only if the sponsor demonstrates that the proposed pilot project would:

K. In Section 187.412(a), a new sentence was added at the end of the subsection as follows:

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a) An EMSA executed under this Part may be amended by mutual agreement between the Agency and a sponsor, provided all members of the stakeholder group have received prior written notice and an opportunity to comment on a proposed modification to the EMSA. An EMSA may be amended without public notice as specified under Section 187.402(d) or 187.404 of this Part.

L. In Section 187.412(b) the word "either" was stricken, the word "the" was added before the word "party", and the phrase "requesting the proposed modification" was added after the word "party" as follows:

b) Either the Agency or a sponsor may request modification of an EMSA at any time. If an agreement cannot be reached on a proposed modification within 60 calendar days, ~~either~~ the party requesting the proposed modification may initiate proceedings to terminate the EMSA.

M. In Section 187.414(a)(1), the term "agreement" was replaced with the term "EMSA" and the term "participant" was replaced with the phrase "owner or operator of a pilot project" as follows:

a) Termination by the Agency

1) In the case of deficient performance of any term or condition in an EMSA that prevents achievement of the stated purposes in subsection (b) of Section 52.3-1 of the Act, the Agency may terminate the agreement EMSA and the participant owner or operator of a pilot project may be subject to enforcement in accordance with the provisions of Section 31 or 42 of the Act. (Section 52.3-4(b) of the Act)

N. In Section 187.414(a)(2), the term "agreement" was replaced with the term "EMSA" and the phrase "pursuant to this subsection (a)" was added after the word "terminated" as follows:

2) If the EMSA agreement is terminated pursuant to this subsection (a), the owner or operator of a pilot project shall have sufficient time to apply for and receive any necessary permits to continue the operations in effect during the course of the EMSA. Any such application shall also be deemed a timely and complete application for renewal of an existing permit under applicable law. (Section 52.3-4(c) of the Act)

O. In Section 187.414(b)(1), the phrase "pursuant to this subsection (b)" was added after the term "EMSA" as follows:

b) Termination by the Sponsor

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- (2) Upon termination of an EMSA pursuant to this subsection (b), a sponsor shall be subject to, and shall comply with, all applicable State, federal and local environmental statutes, regulations and ordinances.

P. In Section 187.412(b)(1), the following phrase was added before the end of the second sentence as follows:

(b)(1) A sponsor may terminate an EMSA at any time upon written notice to the Agency and members of the stakeholder group. Notice must be given at least 90 days prior to termination; provided, however, that a sponsor may, with the Agency's approval, immediately terminate an EMSA upon notice to the Agency if continuing to operate under the EMSA would cause air or water pollution or an unauthorized release in violation of the Act.

Q. In Section 187.416(c), the following underscored sentence was added to the end of the subsection as follows:

(c) It shall be within the sole discretion of the Agency to renew an EMSA initially executed prior to December 31, 2001, and its decision shall not be appealable. A sponsor may request that the Agency hold a public hearing on its decision to deny a renewal application, to be held at the sponsor's sole cost and expense; however, it is within the sole discretion of the Agency to hold a hearing on the denial of a renewal application.

12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will these rules replace emergency rules currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and purpose of the Adopted Rules: This rulemaking implements Section 52.3 of the Environmental Protection Act (Act) [415 ILCS 5/52.3] (the "Environmental Management System Agreement" or "EMSA" provisions). These rules provide for a pilot program to allow companies (sponsors) to propose, and the Illinois Environmental Protection Agency (Agency) to accept pursuant to an EMSA, a pilot project to implement innovative environmental measures, even if one or more of these measures is inconsistent with otherwise applicable environmental statutes or regulations of the State. To participate in the pilot program, the sponsor must demonstrate that the proposed pilot project would either:

- 1) achieve emissions reductions or reductions in discharges or wastes beyond the otherwise applicable statutory and regulatory requirements

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- through pollution prevention or other suitable means; or
- 2) achieve real environmental risk reduction or foster environmental compliance by other persons regulated under the Act in a manner that is clearly superior to the existing regulatory means.

Participation in this program is voluntary and at the discretion of the Agency.

16) Information and questions regarding this adopted part shall be directed to:

Laurel L. Kroack  
Assistant Counsel  
Illinois EPA  
1021 North Grand Ave. East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544

The full text of the Adopted Rules begins on the next page:



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## TITLE 35: ENVIRONMENTAL PROTECTION

## SUBTITLE A: GENERAL PROVISIONS

## CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

## PART 187

## REGULATORY INNOVATION PROJECTS

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187.102  
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Definitions  
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Public Access to Pilot Program Correspondence  
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## SUBPART B: PARTICIPATION IN PILOT PROGRAM

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Nature and Duration of Pilot Program  
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Letter of Intent; Agency Response  
Development of an EMSA  
Public Notice, Comment and Hearing  
Criteria for Approval of an EMSA  
Execution of an EMSA  
Performance Assurance  
Modification of an EMSA  
Termination of an EMSA  
Renewal of an EMSA

AUTHORITY: Implementing and authorized by Section 52.3 of the Environmental Protection Act [415 ILCS 5/52.3].

SOURCE: Adopted **MAR 20 1998**

at 22

Ill. Reg.

**621**

, effective

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## SUBPART A: PURPOSE; DEFINITIONS AND GENERAL PROVISIONS

## Section 187.100 Purpose

The purpose of this Part is to implement a voluntary pilot program pursuant to Section 52.3 of the Act by which the Agency may enter into Environmental Management System Agreements or EMSAs with persons regulated under the Act to implement innovative environmental measures, even if one or more of the terms of such agreements are inconsistent with otherwise applicable statutes or regulations of the State.

## Section 187.102 Definitions

For purposes of this Part, the words and terms used in this Part shall have the meanings given below. Words and terms not defined in this Part, if defined in the Act, shall have the meanings ascribed in the Act.

"Act" means the Environmental Protection Act [415 ILCS 5].

"Agency" means the Environmental Protection Agency established by the Act. (Section 3.08 of the Act).

"Director" means the Director of the Illinois Environmental Protection Agency.

"Environmental Management System" means the system by which an entity achieves continuous environmental improvement by integrating environmental management into on-going business planning and manages environmental performance, including, but not limited to, environmental management systems implementing International Organization for Standardization (ISO) 14001 standard.

"Environmental Management System Agreement (EMSA)" means the agreement between the Agency and a sponsor that describes the innovative environmental measures to be implemented, schedules for attaining goals, and mechanisms for accountability.

"Innovative Environmental Measures" means any procedures, practices, technologies or systems that pertain to environmental management and are expected to improve environmental performance when applied.

"Pilot Program" means the program described in this Part that allows the use of EMSAs to promote innovative environmental measures.

"Pilot Project" means an innovative environmental project covering one or more designated facilities, designed and implemented in the form of an EMSA executed by the Agency and a sponsor in accordance with this Part.

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"Sponsor" means the proponent of a pilot project that enters into an EMSA with the Agency.

**Section 187.104 Relation to Other Rules and Regulatory Innovation Programs**

- a) The provisions of this Part shall apply to any pilot project developed pursuant to Section 52.3 of the Act.
- b) Nothing in this Part shall be construed to modify or alter any federal environmental statute or regulation applicable to a pilot project or its sponsor, owner or operator. An EMSA that seeks to modify or alter a federal environmental statute or regulation applicable to a pilot project or its sponsor, owner or operator must follow any procedures applicable under such law.
- c) No EMSA entered into by the Agency may allow a participant in the pilot program to cause air or water pollution or an unauthorized release in violation of the Act.
- d) Nothing in this Part shall be construed to affect any fees that a sponsor or an owner or operator of a facility covered by an EMSA may be subject to under any State or federal environmental statute or regulation.
- e) *Nothing in this Section shall limit the authority or ability of a State's Attorney or the Attorney General to proceed pursuant to Section 43(a) of the Act, or to enforce Section 44 or 44.1 of the Act, except that for the purposes of enforcement under Section 43(a), 44 or 44.1, an EMSA shall be deemed to be a permit issued under the Act to engage in activities authorized under the EMSA. (Section 52.3-4(e) of the Act)*

**Section 187.106 Public Access to Pilot Program Correspondence**

The Agency shall record and maintain a list of all correspondence sent and received by the Agency relating to participation in the pilot program, and such information, to the extent it does not constitute confidential business or trade secret information, shall be made available for review by the public.

**Section 187.108 Confidential Business and Trade Secret Information**

To the extent practicable, the Agency shall not designate EMSA related data as confidential business or trade secret information. A sponsor must identify any information in a pilot project document, including an EMSA, that it claims constitutes confidential business or trade secret information, and must justify such claim in accordance with 35 Ill. Adm. Code 120 and 2 Ill. Adm. Code 1827.

## SUBPART B: PARTICIPATION IN PILOT PROGRAM

**Section 187.200 Nature and Duration of Pilot Program**

- a) It is within the sole discretion of the Agency to enter into an EMSA

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- b) The Agency may reject a proposed pilot project at any time prior to execution of an EMSA, and any decision by the Agency to reject a proposed pilot project is not appealable. (See Section 52.3-1(c) of the Act.)
- c) EMSAs under this Part must be initially executed on or before December 31, 2001, and shall be for a term not to exceed 5 years. An EMSA executed on or before December 31, 2001, may, in the Agency's discretion, be renewed for additional periods not to exceed 5 years per renewal.

**Section 187.202 Eligibility for Participation**

- a) Except as provided in subsection (b) of this Section, any person subject to a requirement of the Act or a regulation promulgated thereunder may participate in the pilot program.
- b) The following persons shall not be eligible to participate in the pilot program:
  - 1) Any person that is currently subject to an environmental enforcement action under the Act or regulations promulgated thereunder;
  - 2) Any person that has failed to renew any permit, or submit a complete Clean Air Act Permit Program permit application, as may be required by the Act or regulations promulgated thereunder; and
  - 3) Any person that has failed to pay a required fee or penalty to the State of Illinois.
- c) In determining whether a person is eligible to participate in the pilot program, the Agency may consider the person's past environmental performance, including, but not limited to, pre-enforcement and enforcement actions and previously adjudicated violations.

## SUBPART C: STAKEHOLDER INVOLVEMENT

**Section 187.300 Stakeholder Involvement**

An EMSA shall provide for productive stakeholder involvement in a pilot project's development and implementation. The nature and extent of stakeholder involvement will be determined on a case by case basis, and will be fully described in an EMSA.

**Section 187.302 Stakeholder Group, Members**

- a) A stakeholder group assembled by a sponsor shall represent a cross-section of persons interested in a proposed pilot project, and may include, though need not be limited to, representatives from:
  - 1) Community groups, including citizen groups interested in environmental, economic or sustainable development issues;
  - 2) Economic and business groups, including trade associations and

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labor organizations;

- 3) Academic institutions;
  - 4) Religious organizations; and
  - 5) Federal, State and local governmental entities.
- b) Any person interested in a proposed pilot project who has not been selected by a sponsor to participate in the stakeholder group assembled for the proposed pilot project may so notify the Agency. The Agency shall consider this notification in determining whether to enter into an EMSA with the sponsor.

**Section 187.304 Sponsor Obligations**

- a) If a proposed pilot project is technically complex, the sponsor of the pilot project may be required to provide technical or other assistance, at the sponsor's expense, in order to promote informed participation by members of the stakeholder group. Any such technical assistance shall be provided by persons that are acceptable to both the sponsor and the stakeholder group.
- b) A sponsor of a pilot project shall establish, in cooperation with the stakeholder group, an on-going communication process in order to keep the stakeholder group informed regarding the status of the pilot project. The process shall include, at a minimum, annual meetings and periodic distribution of performance information that clearly conveys the progress of the pilot project, problems that have been encountered and any corrective action that has been taken in response thereto. Information pertinent to the pilot project shall be communicated in a clear and understandable manner. Scientific and other complex information should be explained in a manner that provides for productive stakeholder involvement.

## SUBPART D: PROCEDURES

**Section 187.400 Letter of Intent; Agency Response**

- a) In order to initiate the process of entering into an EMSA, the sponsor of a proposed pilot project shall submit a letter of intent to the Director that shall include:
  - 1) A general description of the proposed pilot project;
  - 2) Identification of each environmental statute, regulation and permit that is applicable to the proposed pilot project and any permit appeals, variances, or adjusted standard petitions which are currently applicable to the proposed pilot project or are pending before the Illinois Pollution Control Board or any court;
  - 3) A statement by the sponsor regarding the compliance status of the proposed pilot project and its sponsor, owner and operator with all applicable State and federal environmental statutes and regulations. Any changes to the compliance status of the proposed pilot project and its sponsor, owner and operator during

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development of an EMSA must be promptly reported to the Agency; and

- 4) Identification of persons or groups whom the sponsor believes should serve as members of the stakeholder group in the development and implementation of the proposed pilot project.
- b) The Agency shall respond in writing to a letter of intent within 60 days after receipt of such letter. Such response shall include a determination of whether the letter of intent contains the information required by subsection (a) of this Section, as well as a determination whether development of an EMSA for the proposed pilot project is warranted.
- 1) If the Agency determines that the letter of intent does not contain information required by subsection (a) of this Section, it may identify such information and provide the sponsor with an opportunity to revise and resubmit the letter of intent.
- 2) If the Agency determines that the proposed pilot project, as described in the letter of intent, does not warrant development of an EMSA, it shall state the basis for its decision.
- 3) If the Agency determines that the proposed pilot project, as described in the letter of intent, contains the information prescribed by subsection (a) of this Section and warrants development of an EMSA, it shall notify the sponsor that it may proceed with development of a draft EMSA.

**Section 187.402 Development of an EMSA**

- a) The Agency and the sponsor shall decide upon an acceptable development schedule for the EMSA and the proposed pilot project.
- b) A sponsor shall submit to the Director a draft EMSA. At a minimum, the draft EMSA shall include:
  - 1) Identification of the sponsors;
  - 2) Identification of all State and federal environmental statutes and regulations applicable to the proposed pilot project and the owner or operator of the proposed pilot project;
  - 3) Identification of any State or federal environmental statutes and regulations which are inconsistent with the terms of the draft EMSA and would cease to be applicable should the EMSA be approved;
  - 4) A description of the innovative environmental measures being proposed as part of the pilot project;
  - 5) An explanation of the manner in which the proposed pilot project will achieve the stated purposes in subsection (b) of Section 52.3-1 of the Act;
  - 6) Identification of those members of the general public, representatives of local communities, and environmental groups who have an interest in the proposed pilot project;
  - 7) A description of the manner in which the EMSA will provide for productive involvement by the stakeholder group in the design and



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- implementation of the proposed pilot project;
- 8) A description of the measures or techniques that will be used to demonstrate ongoing compliance with the EMSA, including, at a minimum, an annual evaluation of the pilot project;
  - 9) Terms and conditions for voluntary termination of the pilot project; and
  - 10) An explanation of the process by which statutory or regulatory environmental requirements that become applicable to the pilot project or its sponsor, owner or operator after the effective date of the EMSA shall be addressed.
- c) Upon submittal of the initial draft EMSA, a sponsor shall provide an executive summary of the initial draft EMSA and proposed pilot project described and submitted in accordance with subsection (b) of this Section to the following persons and inform them that they may obtain the complete document from either the Agency or the sponsor:
- 1) Members of the Illinois General Assembly representing the legislative districts in which the pilot project is located;
  - 2) The Illinois Attorney General; and
  - 3) The State's Attorney of the county in which the pilot project is located.
- d) A sponsor shall provide notice, by publication on a single date in a newspaper of general circulation in the area in which the proposed pilot project is located, that it has submitted an initial draft EMSA for consideration by the Agency. Such notice shall include a statement that interested persons may contact the sponsor to request that they be named to the stakeholder group in the development and implementation of the proposed pilot project. The notice shall be provided within 7 calendar days from the date the initial draft EMSA has been submitted to the Agency in accordance with subsection (b) of this Section.
- e) The Agency shall give preference to and allow greater incentives in an EMSA for pilot projects that include provisions for operating sustainably through continuous improvements in products and processes. Desirable components of a pilot project include, but are not limited to, the following:
- 1) Incorporating source reduction into core business practices;
  - 2) Avoiding the production of waste and pollution in products and processes;
  - 3) Accounting for total environmental impact throughout the life cycle of products and services;
  - 4) Improving efficiency in the use of raw materials, energy, water or other resources;
  - 5) Employing planning processes or techniques to identify source reduction and product stewardship opportunities;
  - 6) Training and encouraging employees to identify opportunities for environmental improvement;
  - 7) Protecting and enhancing natural resources; and
  - 8) Ensuring that information and reporting systems track progress

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- f) toward goals and document improvements.
- The Agency shall encourage the development and use of Environmental Management Systems as part of a pilot project.
- g) The Agency shall reject proposed pilot projects that generate adverse environmental consequences, particularly those stimulating intermedia pollutant transfers without providing a net environmental gain.

**Section 187.404 Public Notice, Comment and Hearing**

Prior to entering into an EMSA, the Agency shall provide notice to the public, including an opportunity for public comment and hearing in accordance with the procedures set forth at 35 Ill. Adm. Code 164. All costs associated with such notice, comment and hearing shall be paid by the sponsor of the proposed pilot project. Public comments on a proposed pilot project and an EMSA may be submitted to the Agency at any time prior to the public notice and comment and hearing provided for by 35 Ill. Adm. Code 164.

**Section 187.406 Criteria for Approval of an EMSA**

- a) In accordance with Section 52.3-1 of the Act, the Agency may approve an EMSA only if the sponsor demonstrates that the proposed pilot project would:
  - 1) *Achieve emissions reductions or reductions in discharges or wastes beyond the otherwise applicable statutory and regulatory requirements through pollution prevention or other suitable means; or*
  - 2) *Achieve real environmental risk reduction or foster environmental compliance by other persons regulated under the Act in a manner that is clearly superior to the existing regulatory means.*
- b) An EMSA under this Part shall contain adequate provisions to ensure that its terms and conditions are performed by the sponsor. Performance of the terms and conditions of an EMSA must be measurable and verifiable, and shall be monitored, documented and reported by a sponsor in a clear and complete manner.

**Section 187.408 Execution of an EMSA**

- a) An EMSA developed in accordance with this Part, and which has been approved by the Director, shall become effective upon signature by the sponsor and the Director.
- b) An EMSA shall operate in lieu of all applicable environmental requirements under Illinois statutes, regulations, and existing permits that are identified in the EMSA. Any environmental statute, regulation or condition in an existing permit that differs from a term or condition in an EMSA shall cease to apply from the effective date of an initial or renewed EMSA until it is terminated or expires.
- c) An EMSA executed in accordance with this Part shall be made publicly available and shall be distributed to all members of the stakeholder

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group.

**Section 187.410 Performance Assurance**

- a) The Agency is authorized to monitor compliance with the EMSA and may access and enter the facilities, buildings or property that are the subject of the pilot project for purposes of monitoring compliance, and to require such recordkeeping and reporting as it deems appropriate, including a final report assessing the environmental, regulatory and economic results of the pilot project.
- b) The sponsor of an EMSA shall specify the manner in which performance of the terms and conditions of an EMSA shall be assured. The Agency shall consider the following in determining whether an EMSA contains adequate provisions to assure performance:
  - 1) The technical complexity of the proposed pilot project;
  - 2) The environmental risk associated with the proposed pilot project; and
  - 3) The uncertainty that the proposed innovative environmental measures authorized by the EMSA will be successful.
- c) A sponsor's performance of the terms and conditions of an EMSA shall be assessed not less than annually, and such assessment may include an evaluation of the sponsor's performance by a third party acceptable to the Agency and qualified to make such an evaluation.

**d) Notification of Nonperformance**

- 1) A sponsor shall notify the Agency and all members of the stakeholder group of any nonperformance of a term or condition of an EMSA. A notification under this subsection (d) shall include a description of any activity performed by the sponsor to cure or mitigate the effects of the nonperformance.
- 2) The Agency shall investigate and monitor a sponsor to determine whether the sponsor has responded adequately to any nonperformance, and shall notify all members of the stakeholder group of the results of its investigation.
- e) Upon identification of nonperformance of the terms or conditions of an EMSA, the Agency may, consistent with this Part, enforce the terms of such EMSA.
- f) An EMSA may contain provisions for alternative dispute resolution.

**Section 187.412 Modification of an EMSA**

- a) An EMSA executed under this Part may be amended by mutual agreement between the Agency and a sponsor, provided all members of the stakeholder group have received prior written notice and an opportunity to comment on a proposed modification to the EMSA. An EMSA may be amended without public notice as specified under Section 187.402(d) or 187.404 of this Part.
- b) Either the Agency or a sponsor may request modification of an EMSA at any time. If an agreement cannot be reached on a proposed

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modification within 60 calendar days, the party requesting the proposed modification may initiate proceedings to terminate the EMSA.

**Section 187.414 Termination of an EMSA****a) Termination by the Agency**

- 1) In the case of deficient performance of any term or condition in an EMSA that prevents achievement of the stated purposes in subsection (b) of Section 52.3-1 of the Act, the Agency may terminate the EMSA and the owner or operator of a pilot project may be subject to enforcement in accordance with the provisions of Section 31 or 42 of the Act. (Section 52.3-4(b) of the Act)
- 2) If the EMSA is terminated pursuant to this subsection (a), the owner or operator of a pilot project shall have sufficient time to apply for and receive any necessary permits to continue the operations in effect during the course of the EMSA. Any such application shall also be deemed a timely and complete application for renewal of an existing permit under applicable law. (Section 52.3-4(c) of the Act)
- 3) The Agency shall follow procedures for involuntary termination established by the Board.
- b) Termination by the Sponsor
  - 1) A sponsor may terminate an EMSA at any time upon written notice to the Agency and members of the stakeholder group. Notice must be given at least 90 days prior to termination; provided, however, that a sponsor may, with the Agency's approval, immediately terminate an EMSA upon notice to the Agency if continuing to operate under the EMSA would cause air or water pollution or an unauthorized release in violation of the Act.
  - 2) Upon termination of an EMSA pursuant to this subsection (b), a sponsor shall be subject to, and shall comply with, all applicable State, federal and local environmental statutes, regulations and ordinances.

**Section 187.416 Renewal of an EMSA**

- a) The Agency's authority to execute initial EMSAs under the Act and this Part shall expire on December 31, 2001. An initial agreement may be renewed for additional periods of up to 5 years after December 31, 2001, if the Agency finds the EMSA continues to meet applicable requirements and the purposes of Section 52.3-1 of the Act.
- b) In determining whether to renew an EMSA initially executed prior to December 31, 2001, the Agency shall consider all relevant factors, including but not limited to:
  - 1) The environmental, regulatory and economic results of the pilot project during the initial term of the EMSA;
  - 2) The likelihood that renewal of the EMSA will advance the purposes of Section 52.3-1 of the Act; and

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## NOTICE OF ADOPTED RULES

- 3) Stakeholder satisfaction with the pilot project.
- c) It shall be within the sole discretion of the Agency to renew an EMSA initially executed prior to December 31, 2001, and its decision shall not be appealable. A sponsor may request that the Agency hold a public hearing on its decision to deny a renewal application, to be held at the sponsor's sole cost and expense; however, it is within the sole discretion of the Agency to hold a hearing on the denial of a renewal application.
- d) Prior to renewing an EMSA under this Section, the Agency shall comply with the public notice, comment and hearing provisions of Section 187.404 of this Part.
- e) A sponsor requesting to renew an EMSA shall submit its renewal application to the Agency no later than 6 months prior to the expiration of the initial EMSA. The Agency shall have 60 days after receipt to accept or reject a renewal application. The Agency's failure to notify an applicant that it has accepted a renewal application shall be deemed a rejection of the renewal application. If the Agency rejects the renewal application, the pilot project and its owner or operator shall be in compliance with all environmental laws, regulations and ordinances applicable to the pilot project and its owner or operator within 6 months after expiration of the initial EMSA.

## DEPARTMENT OF STATE POLICE

## NOTICE OF ADOPTED AMENDMENT(S)

- 1) Heading of the Part: Illinois Uniform Conviction Information Act
- 2) Code Citation: 20 Ill. Adm. Code 1215
- 3) Section Numbers: Adopted Action:  
1215.30 Amendment  
1215.35 Amendment
- 4) Statutory Authority: Implementing and authorized by Section 19 of the Illinois Uniform Conviction Information Act [20 ICS 2635/19] and authorized by Section 55a of the Civil Administrative Code of Illinois [20 ILCS 2605/55a].
- 5) Effective Date of Amendments: March 23, 1998
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this amendment contain incorporation by reference? No
- 8) Date filed in Agency Principal Office: March 23, 1998
- 9) Notice of Proposal published in Illinois Register: 21 Ill. Reg. 5464, May 2, 1997
- 10) Has JCAR issued a Statement of Objection to these rule(s)? No
- 11) Difference(s) between proposal and final version: Editing and formatting changes recommended by JCAR were made.
- In Table of Contents and text deleted "WRITTEN" following "PROCESSING" in SUBPART B.
- In Table of Contents added "1215.35 Automated Request Procedures".
- In Table of Contents deleted SUBPART C.
- In Section 1215.30(b) added "A copy of the response furnished by the Department shall be provided by the requester to the individual named in the request."
- In text, deleted "SUBPART C: OPERATIONS FOR PROCESSING AUTOMATED REQUESTS."
- Proposed Section 1215.60 was changed to "1215.35".
- In Section 1215.35(a) the wording following "transmission" was changed to "and reception of data by Department equipment."



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In Section 1215.35(d), changed "1215.80" to "1215.50".

In Section 1215.40, the proposed deletion of the sentence, "Prior to disseminating conviction information, the Department shall review its inprocess files to ensure that the information to be disseminated is complete.", was withdrawn.

Proposed Sections 1215.70 and 1215.80 were deleted.

- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will this amendment replace an emergency rules currently in effect? No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and purpose of amendment: Technology is now available to process conviction information requests by automated electronic means. This amendment allows for the procedure.
- 16) Information and questions regarding this adopted amendment shall be directed to:

Mr. James W. Redlich  
Chief Legal Counsel  
Illinois State Police  
124 East Adams Street, Room 102  
P.O. Box 19461  
Springfield, IL 62794-9461  
(217) 782-7658

## DEPARTMENT OF STATE POLICE

## NOTICE OF ADOPTED AMENDMENT(S)

TITLE 20: CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT  
CHAPTER II: DEPARTMENT OF STATE POLICE

## PART 1215

## ILLINOIS UNIFORM CONVICTION INFORMATION ACT

## SUBPART A: PROMULGATION

Section  
1215.10 Purpose  
1215.20 Definitions

## SUBPART B: OPERATIONS FOR PROCESSING REQUESTS

Section  
1215.30 Written Request Procedures  
1215.35 Automated Request Procedures  
1215.40 Response Procedures  
1215.50 Fees

AUTHORITY: Implementing and authorized by Section 19 of the Illinois Uniform Conviction Information Act [20 ILCS 2635/19] and authorized by Section 55a of the Civil Administrative Code of Illinois [20 ILCS 2605/55a].

SOURCE: Adopted at 15 Ill. Reg. 1107, effective January 14, 1991; amended at 22 Ill. Reg. 6034, effective MAR 23 1998.

## SUBPART A: PROMULGATION

## Section 1215.20 Definitions

Unless specified otherwise, all terms shall have the meaning set forth in Section 3 of the Illinois Uniform Conviction Information Act [20 ILCS 2635/3] (~~§§17-Rev.-Stat.-1989-ch.-38-par.-1603~~).

## SUBPART B: OPERATIONS FOR PROCESSING REQUESTS

## Section 1215.30 Written Request Procedures

- a) Requests for conviction information shall be made by completing a Conviction Information Request form provided by the Illinois State Police. These forms shall be made available through the Bureau of Identification, 260 North Chicago Street, Joliet, Illinois 60431-1060. In order to be processed, Conviction Information Request forms shall at a minimum include a complete and accurate mailing address for the requester, the requester's signature, an indication of whether the request is for licensing or employment purposes, and the record subject's name, race, sex, and date of birth. Requests for employment

## DEPARTMENT OF STATE POLICE

## NOTICE OF ADOPTED AMENDMENT(S)

or licensing purposes shall also be signed by the individual to whom the information request pertains. ~~All requests shall also be accompanied by the correct fee as established in Section 1215.50 and in the form of a cashier's check or money order.~~

b) If the request is for employment or licensing purposes, the requester shall maintain a release on file for at least two years signed by the individual to whom the information pertains. The requester shall notify the individual named in the request that the individual has the obligation and responsibility to notify the requester within seven days if the information provided is incomplete or incorrect. A copy of the response furnished by the Department shall be provided by the requester to the individual named in the request.

c) All requests shall be accompanied by the correct fee as established in Section 1215.50 and paid in the form of a check or money order, unless other payment arrangements are approved by the Department.

(Source: Amended at 22 Ill. Reg. 6234, effective

MAR 23 1998)

Section 1215.35 Automated Request Procedures

a) Requests submitted in an automated format shall be made in accordance with record layout formats, software and hardware specifications, or other guidelines suitable for electronic transmission and reception of data by Department equipment.

b) Automated Conviction Information Requests shall at a minimum include the record subject's name, race, sex and date of birth. The requester must also provide a complete and accurate mailing address for the requester in order to receive responses. The requester must sign a user's agreement to be provided by the Department.

c) If the request is for employment or licensing purposes, the requester shall maintain a release on file for at least two years signed by the individual to whom the information pertains. The requester shall notify the individual named in the request that the individual has the obligation and responsibility to notify the requester within seven days if the information provided is incomplete or incorrect. A copy of the response furnished by the Department shall be provided by the requester to the individual named in the request.

d) All requests shall be accompanied by the correct fee as established in Section 1215.50 and paid in the form of a check or money order, unless other payment arrangements are approved by the Department.

(Source: Added at 22 Ill. Reg. 6234, effective

MAR 23 1998)

## STATE BOARD OF EDUCATION

## NOTICE OF EMERGENCY AMENDMENTS

1) Heading of the Part: School Construction Program

2) Code Citation: 23 Ill. Adm. Code 151

3) Section Numbers: Emergency Action:  
151.35 New Section  
151.55 New Section

4) Statutory Authority: The School Construction Law [105 ILCS 230/5] (see P.A. 90-548, effective January 1, 1998)

5) Effective Date of Amendments: March 24, 1998

6) If this emergency amendment is to expire before the end of the 150-day period, please specify the date on which it is to expire: Not applicable

7) Date Filed in Agency's Principal Office: March 20, 1998

8) Reason for Emergency: These amendments are needed immediately so that the funding decisions called for in the School Construction Law can be made within the applicable timelines.

9) A Complete Description of the Subjects and Issues Involved:

At its January meeting, the Board adopted emergency rules to implement the portion of P.A. 90-548 known as the School Construction Law. Emergency rulemaking was needed so that entitlements could be issued quickly enough to allow districts to conduct referenda in March. These rules were subsequently modified in response to several objections issued by the Joint Committee on Administrative Rules.

While these activities were taking place, it also became apparent that the requirement contained in Section 151.30 for a comprehensive, districtwide facility inventory (see Section 151.30(e)(4)) will be overly burdensome for the Chicago Public Schools. Given the Chicago District's size, and in consideration of the fact that the law allocates 20 percent of the funds under this program to that district, agency staff have determined that less exhaustive information should be required in Chicago's application.

Staff of the Joint Committee have strongly encouraged the agency to add a specific rule that will express the requirements applicable to Chicago, rather than simply applying a liberal interpretation of Section 151.30 to that situation. Section 151.35 has therefore been prepared for this purpose, and it includes a later application deadline for the Chicago Public Schools this year, to permit the district to comply with the requirements it contains.

Another concern which has surfaced since the emergency rules were adopted

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has been voiced by unit school districts and has to do with their calculation of available capacity. There is a complexity inherent to these districts which is not acknowledged in the rule as written. Specifically, available capacity at the elementary level cannot be used to house high school students and vice versa, making the straightforward numerical calculation called for in the current rule (Section 151.50(c)) unrealistic for unit districts.

It was, of course, not our intention to penalize unit districts. In order to alleviate this problem, a new Section 151.55 is being promulgated that will permit appropriate differentiation between a district's levels of available capacity at the elementary and secondary levels.

- 10) Are there any proposed amendments to this Part pending? No
- 11) Statement of Statewide Policy Objectives: This rulemaking will not create or enlarge a State mandate.
- 12) Information and questions regarding these rules shall be directed to:

Gary V. Ey  
Associate Superintendent  
Illinois State Board of Education  
100 North First Street  
Springfield, IL 62777  
(217) 785-8779

The full text of the Emergency Amendments begins on the next page:

## STATE BOARD OF EDUCATION

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## TITLE 23: EDUCATION AND CULTURAL RESOURCES

## SUBTITLE A: EDUCATION

## CHAPTER I: STATE BOARD OF EDUCATION

## SUBCHAPTER C: FINANCE

## PART 151

## SCHOOL CONSTRUCTION PROGRAM

Section	Purpose	Application for School Construction Project Grant Entitlement Entitlement - Districts for School Construction Project Grant Entitlement - Districts With A Population Exceeding 500,000	Construction	Project	Grant
151.10	Purpose				
EMERGENCY					
151.20	Eligible Applicants				
EMERGENCY					
151.30	Application for School Construction Project Grant Entitlement				
EMERGENCY					
151.35	Application for School Construction Project Grant Entitlement Entitlement - Districts for School Construction Project Grant Entitlement - Districts With A Population Exceeding 500,000				
EMERGENCY					
151.40	Award of Construction Project Grant Entitlement				
EMERGENCY					
151.50	Priority Ranking of Construction Grant Entitlements				
EMERGENCY					
151.55	Needed Capacity for Unit Districts				
EMERGENCY					
151.60	Grant Index				
EMERGENCY					
151.70	Debt Service Grants				
EMERGENCY					

AUTHORITY: Implementing the School Construction Law [105 ILCS 230/5] and authorized by Section 5-55 of that Law.

SOURCE: Emergency rules adopted at 22 Ill. Reg. 2616, effective January 16, 1998, for a maximum of 150 days; emergency rule modified at 22 Ill. Reg. 4500, effective March 1998; emergency amendment at 22 Ill. Reg. 6230, effective March 24, 1998, for a maximum of 150 days.

Section 151.35 Application for School Construction Project Grant Entitlement - Districts With A Population Exceeding 500,000  
EMERGENCY

A school district with a population exceeding 500,000 shall apply for a school construction project grant entitlement by submitting an application in accordance with Section 151.30 as modified by this Section.

- a) An application for a grant entitlement for Fiscal Year 1998 must be received by April 1, 1998.
- b) In lieu of the facility inventory information required by Section



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151.30(e)(4) of this Part, each school or project for which grant funds are being sought shall be identified in the District Facilities Plan, including the following information as applicable:

- 1) the facility type;
- 2) the ownership class;
- 3) an indication of whether the structure is a main building or a building addition;
- 4) the type of school housed in the building or building addition;
- 5) the number of students currently housed in the facility;
- 6) an indication of the district's plans for the facility within the next five years; and
- 7) an indication of which planned activities are the subject of a request for a school construction grant.

(Source: Added by emergency rulemaking at 22 Ill. Reg. effective March 24, 1998, for a maximum of 150 days)

**Section 151.55 Needed Capacity for Unit Districts****EMERGENCY**

For unit districts, needed capacity under Section 151.50(c) of this Part shall be calculated separately for grades pre-kindergarten through eight and grades nine through twelve, with a needed capacity that is a negative number being treated as zero. The district's needed capacity shall be the sum of these needed capacities.

(Source: Added by emergency rulemaking at 22 Ill. Reg. effective March 24, 1998, for a maximum of 150 days)

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## DEPARTMENT OF NUCLEAR SAFETY

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- 1) Heading of the Part: Licensing of Radioactive Material
- 2) Code Citation: 32 Ill. Adm. Code 330
- 3) Section Number: Emergency Action:  
330.40 Amendment
- 4) Statutory Authority: Implementing and authorized by the Radiation Protection Act of 1990 [420 ILCS 40].
- 5) Effective Date of Amendments: March 18, 1998
- 6) If this emergency amendment is to expire before the end of the 150-day period, please specify the date on which it is to expire: This emergency amendment will expire when the proposed amendment is adopted.
- 7) Date Filed in Agency's Principal Office: March 17, 1998

- 8) Reason for Emergency: The U.S. Nuclear Regulatory Commission (NRC) has promulgated an amendment to 10 CFR 30 and 32, "Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea", Federal Register, Vol. 62, no. 231, December 2, 1997, pp. 63634. This amendment was effective January 2, 1998. The purpose of this amendment by NRC was to permit NRC licensees to distribute a radioactive drug containing one microcurie of carbon-14 urea to any person for "in-vivo" diagnostic use. The NRC determined that the radioactive component of such a drug in capsule form presented an insignificant radiation risk, and, therefore, regulatory control of the drug for radiation safety is not necessary. The amendment makes the drug more widely available and reduces costs to patients, insurers and the health care industry. Those aspects of the NRC rule that address possession and use have been designated by the NRC as Division 1 item of compatibility for those states that have Agreement State status. Agreement States are required to amend their regulations to be strictly compatible with the NRC.

The Department has received a request from the Council on Radionuclides and Radiopharmaceuticals, Inc. (CORAR) urging all the Agreement States to immediately take appropriate regulatory action to accommodate the use of the new diagnostic drug by persons exempt from licensing. The Department is therefore amending 32 Ill. Adm. Code 330 to include this exemption.

- 9) A Complete Description of the Subjects and Issues Involved: The Department is adopting this emergency amendment to grant the "in-vivo" diagnostic use of capsules containing one microcurie of carbon-14 urea to physicians who are exempt from the requirements of a license. The Department believes it is of medical importance to grant this exemption because access to this new diagnostic tool is expected to result in the cost effective treatment and cure of most patients suffering from peptic

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ulcers. Section 330.40 is being amended by adding an Agency Note and a cross reference to the NRC rule at 10 CFR 32.21.

The Department's action should not be understood as a desire to limit or preclude public comment. Elsewhere in this issue of the Illinois Register, the Department is proposing, for public comment, a general rulemaking that covers the topics included in the Emergency Amendment.

- 10) Are there any other proposed amendments to this Part pending? No
- 11) Statement of Statewide Policy Objectives: The requirements imposed by the emergency rulemaking are not expected to require local governments to establish, expand, or modify their activities in such a way as to necessitate additional expenditures from local revenues.

- 12) Information and questions regarding this emergency rule shall be directed to:

Robert B. Holtscclaw  
Staff Attorney  
Department of Nuclear Safety  
1035 Outer Park Drive  
Springfield, Illinois 62704  
(217) 524-1003 (voice)  
(217) 782-6133 (TDD)

The full text of the Emergency Amendment begins on the next page:

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TITLE 32: ENERGY  
CHAPTER II: DEPARTMENT OF NUCLEAR SAFETY  
SUBCHAPTER b: RADIATION PROTECTION

## PART 330

## LICENSING OF RADIOACTIVE MATERIAL

## SUBPART A: GENERAL PROVISIONS

Section	Purpose and Scope
330.10	Incorporations by Reference
330.15	License Exemption - Source Material
330.30	License Exemption - Radioactive Materials Other Than Source Material
330.40	EMERGENCY

## SUBPART B: TYPES OF LICENSES

Section	Types of Licenses
330.200	General Licenses - Source Material
330.210	General Licenses - Radioactive Material Other Than Source Material
330.220	

## SUBPART C: SPECIFIC LICENSES

Section	Filing Application for Specific Licenses
330.240	General Requirements for the Issuance of Specific Licenses
330.250	Special Requirements for Issuance of Certain Specific Licenses for Radioactive Materials
330.260	Special Requirements for Specific Licenses of Broad Scope
330.270	Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices that Contain Radioactive Material
330.280	Issuance of Specific Licenses
330.300	Specific Terms and Conditions of License
330.310	Expiration and Termination of Licenses
330.320	Renewal of Licenses
330.330	Amendment of Licenses at Request of Licensee
330.340	Department Action on Application to Renew or Amend
330.350	Persons Possessing a License for Source, Byproduct, or Special Nuclear Material in Quantities Not Sufficient to Form a Critical Mass on Effective Date of This Part
330.360	Persons Possessing Accelerator-Produced or Naturally-Occurring Radioactive Material on Effective Date of This Part (Repealed)
330.370	Transfer of Material
330.400	Modification and Revocation of Licenses
330.500	Reciprocal Recognition of Licenses
330.900	

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## SUBPART D: TRANSPORTATION (Repealed)

Section 330.1000	Transportation of Radioactive Materials (Repealed)
APPENDIX A	Exempt Concentrations
APPENDIX B	Exempt Quantities
APPENDIX C	Groups of Medical Uses of Radioactive Materials (Repealed)
TABLE A	Group I (Repealed)
TABLE B	Group II (Repealed)
TABLE C	Group III (Repealed)
TABLE D	Group IV (Repealed)
TABLE E	Group V (Repealed)
TABLE F	Group VI (Repealed)
APPENDIX D	Limits for Broad Licenses (Section 330.270)
APPENDIX E	Schedule E (Repealed)
APPENDIX F	Schedule F (Repealed)
APPENDIX G	Financial Surety Arrangements (Section 330.250(c)(1)(D))
APPENDIX H	Wording of Financial Surety Arrangements (Section 330.250(c)(1)(E))

AUTHORITY: Implementing and authorized by the Radiation Protection Act of 1990 [420 ILCS 40].

SOURCE: Filed April 20, 1974, by the Department of Public Health; transferred to the Department of Nuclear Safety by P.A. 81-1516, effective December 3, 1980; amended at 5 Ill. Reg. 9586, effective September 10, 1981; codified at 7 Ill. Reg. 17492; recodified at 10 Ill. Reg. 11268; amended at 10 Ill. Reg. 17315, effective September 25, 1986; amended at 15 Ill. Reg. 10632, effective July 15, 1991; amended at 18 Ill. Reg. 5553, effective March 29, 1994; emergency amendment at 22 Ill. Reg. ~~6242~~, effective March 18, 1998, for a maximum of 150 days.

NOTE: In this Part, superscript numbers or letters are denoted by parentheses; subscript are denoted by brackets.

## SUBPART A: GENERAL PROVISIONS

**Section 330.40 License Exemption - Radioactive Materials Other Than Source Material**  
**EMERGENCY**

- a) Exempt Concentrations
- 1) Any person is exempt from this Part to the extent that such person receives, possesses, uses, transfers, owns or acquires products containing radioactive material introduced in concentrations not in excess of those listed in Section 330.Appendix A of this Part provided they have been distributed

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pursuant to a license as described in subsection (a)(2) of this Section ~~below~~. This Section shall not be deemed to authorize the import of radioactive materials or products containing radioactive materials.

- 2) No person may introduce radioactive material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under subsection (a)(1) of this Section ~~above~~ or equivalent regulations of the U.S. Nuclear Regulatory Commission (10 CFR 30.14), an Agreement State or a Licensing State, except in accordance with a specific license issued pursuant to Section 330.280(a) of this Part or the general license provided in Section 330.900 of this Part.

## b) Exempt Quantities

- 1) Any person is exempt from this Part to the extent that such person receives, possesses, uses, transfers, owns or acquires radioactive material in individual quantities each of which does not exceed the applicable quantity set forth in Section 330.Appendix B of this Part provided they have been distributed pursuant to a license as described in subsection (b)(3) of this Section ~~below~~.

AGENCY NOTE: Capsules distributed pursuant to 10 CFR 32.21 that contain carbon-14 urea are only authorized for "in-vivo" diagnostic use for humans. Any person who desires to use the capsules for research involving human subjects shall apply for and receive a specific license from the Department. Nothing in this Section relieves persons from complying with applicable Federal and State requirements governing receipt, administration and use of drugs.

- 2) This subsection (b) does not authorize the production, packaging or repackaging of radioactive material for purposes of commercial distribution, or the incorporation of radioactive material into products intended for commercial distribution.

- 3) No person may, for purposes of commercial distribution, transfer radioactive material in the individual quantities set forth in Section 330.Appendix B of this Part, knowing or having reason to believe that such quantities of radioactive material will be transferred to persons exempt under this subsection (b) or equivalent regulations of the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State, except in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to 10 CFR 32.18 or 32.21, or by the Department pursuant to Section 330.280(b) of this Part, which states that the radioactive material may be transferred by the licensee to persons exempt under this subsection (b) or the equivalent regulations of the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State.

AGENCY NOTE: Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device,



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commodity, or other product containing byproduct material whose subsequent possession, use, transfer and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

## c) Exempt Items

- 1) Certain Items Containing Radioactive Material. Except for persons who apply radioactive material to, or persons who incorporate radioactive material into the following products or persons who initially transfer for sale or distribution the following products, any person is exempt from this Part to the extent that he receives, possesses, uses, transfers, owns or acquires the following products:

AGENCY NOTE: Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing byproduct material whose subsequent possession, use, transfer and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

- A) Timepieces or hands or dials containing not more than the following specified quantities of radioactive material and not exceeding the following specified radiation dose rate:

- i) 925 MBq (25 mCi) of tritium per timepiece;
- ii) 185 MBq (5 mCi) of tritium per hand;
- iii) 555 MBq (15 mCi) of tritium per dial (bezels when used shall be considered as part of the dial);
- iv) 3.7 MBq (100 microCi) of promethium-147 per watch or 7.4 MBq (200 microCi) of promethium-147 per any other timepiece;
- v) 740 kBq (20 microCi) of promethium-147 per watch hand or 1.48 MBq (40 microCi) of promethium-147 per other timepiece hand;
- vi) 2.22 MBq (60 microCi) of promethium-147 per watch dial or 4.44 MBq (120 microCi) of promethium-147 per other timepiece dial (bezels when used shall be considered as part of the dial);
- vii) The radiation dose rate from hands and dials containing promethium-147 will not exceed, when measured through 50 milligrams per square centimeter of absorber: for wrist watches, 1 uGy (100 microrad) per hour at 10 centimeters from any surface; for pocket watches, 1 uGy (100 microrad) per hour at 1 centimeter from any surface; for any other timepiece, 2 uGy (200 microrad) per hour at 10 centimeters from any surface; or
- viii) 37 kBq (1 microCi) of radium-226 per timepiece in timepieces acquired prior to May 1, 1974.

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- B) Lock illuminators containing not more than 555 MBq (15 mCi) of tritium or not more than 74 MBq (2 mCi) of promethium-147 installed in automobile locks. The radiation dose rate from each lock illuminator containing promethium-147 will not exceed 10 uGy (1 mrad) per hour at 1 centimeter from any surface when measured through 50 milligrams per square centimeter of absorber.
  - C) Precision balances containing not more than 37 MBq (1 mCi) of tritium per balance or not more than 18.5 MBq (500 microCi) of tritium per balance part.
  - D) Automobile shift quadrants containing not more than 925 MBq (25 mCi) of tritium.
  - E) Marine compasses containing not more than 27.8 GBq (750 mCi) of tritium gas and other marine navigational instruments containing not more than 9.25 GBq (250 mCi) of tritium gas.
  - F) Thermostat dials and pointers containing not more than 925 MBq (25 mCi) of tritium per thermostat.
  - G) Electron tubes; provided that each tube does not contain more than one of the following specified quantities of radioactive material:
    - i) 5.55 GBq (150 mCi) of tritium per microwave receiver protector tube or 370 MBq (10 mCi) of tritium per any other electron tube;
    - ii) 37 kBq (1 microCi) of cobalt-60;
    - iii) 185 kBq (5 microCi) of nickel-63;
    - iv) 1.11 MBq (30 microCi) of krypton-85;
    - v) 185 kBq (5 microCi) of cesium-137; or
    - vi) 1.11 MBq (30 microCi) of promethium-147;
 and provided further, that the radiation dose rate from each electron tube containing radioactive material will not exceed 10 uGy (1 mrad) per hour at 1 centimeter from any surface when measured through 7 milligrams per square centimeter of absorber.
- AGENCY NOTE: For purposes of subsection (c)(1)(G) of this Section above, "electron tubes" include spark gap tubes, power tubes, gas tubes including glow lamps, receiving tubes, microwave tubes, indicator tubes, pick-up tubes, radiation detection tubes and any other completely sealed tube that is designed to conduct or control electrical currents.
- H) Ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, one or more sources of radioactive material, provided that:
    - i) Each source contains no more than one exempt quantity set forth in Section 330. Appendix B of this Part; and
    - ii) Each instrument contains no more than ten exempt quantities. For purposes of this requirement, an instrument's source(s) may contain one or more

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radionuclides and an individual exempt quantity may be composed of fractional parts of one or more of the exempt quantities in Section 330.280(c)(1)(H) of this Part, provided that the sum of such fractions shall not exceed unity.

AGENCY NOTE: For purposes of subsection (c)(1)(H) of this Section above, 1.85 kBq (50 nCi) of americium-241 is considered an exempt quantity.

- I) Spark gap irradiators containing not more than 37 kBq (1 microCi) of cobalt-60 per spark gap irradiator for use in electrically-ignited fuel oil burners having a firing rate of at least 11.4 liters (3 gallons) per hour.

## 2) Self-Luminous Products Containing Radioactive Material

- A) Tritium, Krypton-85 or Promethium-147. Except for persons who manufacture, process or produce self-luminous products containing tritium, krypton-85 or promethium-147, any person is exempt from this Part to the extent that such person receives, possesses, uses, transfers, owns or acquires tritium, krypton-85 or promethium-147 in self-luminous products manufactured, processed, produced, imported or transferred in accordance with a specific license, issued by the U.S. Nuclear Regulatory Commission pursuant to 10 CFR 32.22, which authorizes the transfer of the product to persons who are exempt from regulatory requirements. The exemption in this subsection does not apply to tritium, krypton-85 or promethium-147 used in products for frivolous purposes or in toys or adornments. The U. S. Nuclear Regulatory Commission shall make this determination of exemption.

- B) Radium-226. Any person is exempt from this Part to the extent that such person receives, possesses, uses, transfers or owns articles containing less than 3.7 kBq (100 nCi) of radium-226 which were acquired prior to May 1, 1974.

## 3) Gas and Aerosol Detectors Containing Radioactive Material

- A) Except for persons who manufacture, process, produce or initially transfer for sale and distribution gas and aerosol detectors containing radioactive material, any person is exempt from 32 Ill. Adm. Code: Chapter II, Subchapter b and d to the extent that such person receives, possesses, uses, transfers, owns or acquires radioactive material in gas and aerosol detectors designed to protect life or property from fires and airborne hazards provided that detectors containing radioactive material shall have been manufactured, imported or initially transferred in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to 10 CFR 32.26 or a Licensing State pursuant to Section 330.280(c) of this Part, which authorizes the transfer of the detectors to persons

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## NOTICE OF EMERGENCY AMENDMENTS

who are exempt from regulatory requirements.

AGENCY NOTE: Authority to transfer possession or control by the manufacturer, processor or producer of any equipment, device, commodity or other product containing byproduct material whose subsequent possession, use, transfer and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

- B) Gas and aerosol detectors previously manufactured and distributed to general licensees in accordance with a specific license issued by an Agreement State shall be considered exempt under subsection (c)(3)(A) of this Section above, provided that the device is labeled in accordance with the specific license authorizing distribution of the generally licensed device and provided further that they meet the requirements of Section 330.280(c) of this Part.

- C) Gas and aerosol detectors containing naturally-occurring or accelerator-produced radioactive material (NARM) previously manufactured and distributed in accordance with a specific license issued by a Licensing State shall be considered exempt under subsection (c)(3)(A) of this Section above, provided that the device is labeled in accordance with the specific license authorizing distribution and provided further that they meet the requirements of Section 330.280(c) of this Part.

- 4) Resins Containing Scandium-46 and Designed for Sand Consolidation in Oil Wells. Any person is exempt from this Part to the extent that such person receives, possesses, uses, transfers, owns or acquires synthetic plastic resins containing scandium-46 which are designed for sand consolidation in oil wells. Such resins shall have been manufactured or imported in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission, or shall have been manufactured in accordance with the specifications contained in a specific license issued by the Department or an Agreement State to the manufacturer of such resins pursuant to licensing requirements equivalent to those in 10 CFR 32.17 published January 1, 1997, exclusive of subsequent amendments or editions. This exemption does not authorize the manufacture of any resins containing scandium-46.

(Source: Amended by emergency rulemaking at 22 Ill. Reg. effective March 18, 1998, for a maximum of 150 days)

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## DEPARTMENT OF PUBLIC AID

NOTICE OF MODIFICATION TO MEET THE RECOMMENDATION  
OF THE JOINT COMMITTEE ON ADMINISTRATIVE RULES

- 1) Heading of the Part: Medical Payment
- 2) Code Citation: 89 Ill. Adm. 140
- 3) Section Number: 140.413  
Proposed Action: Amendment
- 4) Notice of Proposed Amendments Published in the Illinois Register: September 12, 1997 (21 Ill. Reg. 12399)
- 5) JCAR Statement of Recommendation on Proposed Rulemaking Published in the Illinois Register: (22 Ill. Reg. )
- 6) Summary of Action Taken by the Agency:

At its meeting on December 16, 1997, the Joint Committee on Administrative Rules issued a recommendation that addresses existing language in Section 140.413 concerning Department coverage for "mastectomies for non-malignancies." This language came to the Joint Committee's attention in connection with proposed amendments to Section 140.413 that appeared in the *Illinois Register* at 21 Ill. Reg. 12399.

The Joint Committee issued the recommendation because of the concern that the language on mastectomies could be more broadly interpreted than the Department's intended practice. The Department's practice has been to provide coverage for mastectomy for non-malignancy when a client has a breast malignancy, strong family history of breast cancer, and physician recommendation for mastectomy for the unaffected breast. The Joint Committee's concern centers on the potential expectation of coverage for bilateral, prophylactic mastectomy for a client who has a strong family history of breast cancer but no breast malignancy. Therefore, the Joint Committee recommended that the Department prepare a rulemaking proposal that clearly states the policy to be followed on medically necessary mastectomies for breasts showing no evidence of malignancy.

The Department has reviewed the provisions in question and understands the Joint Committee's concerns. It is anticipated that a new agency policy on mastectomies for non-malignancy will be developed. A meeting involving the Department's physician consultants and agency policy staff is planned for that purpose for the week of March 16. If a consensus regarding a new policy is not readily reached, the issue will be taken to the State Medical Advisory Committee, which meets quarterly, to arrive at an appropriate determination. The Department will then prepare proposed amendments to provide the recommended clarification.

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NOTICE OF MODIFICATION TO EMERGENCY RULES IN RESPONSE TO AN  
OBJECTION OF THE JOINT COMMITTEE ON ADMINISTRATIVE RULES

- 1) Heading of the Part: Lead Poisoning Prevention Code
- 2) Code Citation: 77 Ill. Adm. Code 845
- 3) Section Numbers: 845.28
- 4) Notice of Emergency Rules Published in the Illinois Register: November 14, 1997; 21 Ill. Reg. 14680
- 5) JCAR Statement of Objection to Emergency Rules Published in the Illinois Register:
- 6) Date agency submitted this modification to JCAR for approval: February 26, 1998

- 7) Summary of Action Taken by the Agency: The Department agrees with the Joint Committee's objection to the Department's emergency rules entitled Lead Poisoning Prevention Code (77 Ill. Adm. Code 845). Section 845.28(g)(3)(A) incorrectly allows an option for risk assessor license applicants after March 31, 1998 to complete an initial lead training course or be a currently licensed lead inspector and meet specified education and experience requirements. Section 845.28(g) will be modified in response to the objection by deleting subsection (g)(3)(A).

The full text of the Section(s) of the Emergency Rules being modified begins on the next page:



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## TITLE 77: PUBLIC HEALTH

## CHAPTER I: DEPARTMENT OF PUBLIC HEALTH

## SUBCHAPTER P: HAZARDOUS AND POISONOUS SUBSTANCES

## PART 845

## LEAD POISONING PREVENTION CODE

Section	
845.10	Definitions
845.12	Incorporated Materials
845.15	Lead Screening
845.20	Reporting
845.21	Provision of Data
845.23	Laboratory Fees for Blood Lead Screening
845.25	Case Follow-Up
845.26	Inspection of Dwellings, Residential Buildings or Child Care Facilities
845.28	Lead Inspector, Risk Assessor, Worker, Contractor/Supervisor, and Contractor Licensing

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845.29	Safety Guidelines for Workers Removing or Covering Leaded Soil
845.30	Mitigation or Abatement of Lead Hazards
845.31	Lead Abatement Contractor Responsibilities
845.32	Lead Contractor/Supervisor Responsibilities
845.33	Dwellings Not Requiring Abatement or Mitigation
845.40	Approval of Units of Local Government or Health Departments as Delegate Agencies to Administer and Enforce the Lead Poisoning Prevention Act
845.50	Permissible Limits of Lead in and about Dwellings, Residential Buildings or Child Care Facilities
845.60	Placarding of Dwellings (Repealed)

## APPENDIX A

Instructions for Childhood Blood Lead Poisoning Reporting System

EXHIBIT A Instructions for Completing the Laboratory Based Report of Childhood Lead Poisoning

EXHIBIT B Instructions for Submitting Follow-Up Data for Children With Blood Lead Levels &gt; 15 mcg/dL

EXHIBIT C Instructions for Reporting Information by Delegate Agencies on Environmental Inspection for Cases of 20 mcg/dL and Above (Repealed)

APPENDIX B Testing for Lead in Paint by Portable X-Ray Fluorescence Lead in Paint Analyzer (XRF) (Repealed)

APPENDIX C Diagrams of Building Components  
ILLUSTRATION A Inspection Forms and Diagram of Building Components (Repealed)

APPENDIX D Recommended Setup and Use of a Negative Pressure System

ILLUSTRATION A Examples of Negative Pressure Systems

APPENDIX E Soil Sampling

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APPENDIX F Childhood Lead Risk Assessment Questionnaire

APPENDIX G Information Agreement

APPENDIX H Childhood Lead Poisoning Assessment and Screening Algorithm

AUTHORITY: Authorized by and implementing the Lead Poisoning Prevention Act [410 ILCS 45].

SOURCE: Adopted July 15, 1976; amended at 2 Ill. Reg. 43, effective October 23, 1978; rules repealed; new rules adopted and codified at 6 Ill. Reg. 14849, effective November 24, 1982; amended at 7 Ill. Reg. 7652, effective June 14, 1983; amended at 8 Ill. Reg. 8242, effective May 25, 1984; amended at 10 Ill. Reg. 5138, effective April 1, 1986; amended at 17 Ill. Reg. 1884, effective February 1, 1993; amended at 19 Ill. Reg. 238, effective December 31, 1994; amended at 21 Ill. Reg. 7444, effective May 31, 1997; emergency amendment at 21 Ill. Reg. 14680, effective October 31, 1997, for a maximum of 150 days; emergency amendment modified in response to JCAR objection at 22 Ill. Reg. 6252, effective October 31, 1997.

NOTE: In this Part, superscript numbers or letters are denoted by parenthesis; subscript are denoted by brackets.

**Section 845.28 Lead Inspector, Risk Assessor, Worker, Contractor/Supervisor, and Contractor Licensing**  
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a) A person shall be licensed by the Department prior to engaging in lead inspection and compliance sampling activities. After October 31, 1997, a person shall be licensed by the Department, in accordance with subsection (g) of this Section, prior to engaging in risk assessor activities. The Department shall issue a Lead Inspector's License to qualified applicants. In order to qualify, an applicant shall:

- 1) be at least 18 years of age;
- 2) attend a Department approved course, in accordance with subsection (f) of this Section, and pass the examination administered at the conclusion of the course;
- 3) submit a recent 1" x 1" photograph of applicant for proper identification of the licensee. The license shall not be issued without an identification photograph;
- 4) attend a three day Department-approved course, in accordance with subsection (f)(2) of this Section; and
- 5) submit to the Department the required fee.

b) Application. Each person desiring licensure as a lead inspector or risk assessor shall make application to the Department on forms provided by the Department. Each application shall be accompanied by a \$100 nonrefundable fee, and a certificate verifying satisfactory completion of a Department-approved lead inspector training course within one year prior to application for a lead inspector license. In addition to the application requirements for a lead inspector's

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license, an application for the risk assessor's license shall include a \$100 non-refundable fee and a certificate verifying satisfactory completion of a Department-approved risk assessor training course within one year prior to application. Employees of the Illinois Department of Public Health, a delegate agency, or a local health department shall be exempt from licensure fees when such employees' licenses are used only for purposes related to employment at the above-mentioned agencies.

- c) Reciprocity. Each applicant for licensure who is licensed or certified as a lead inspector or risk assessor in another state may request reciprocal licensure. The Department shall evaluate the requirements for licensure in such other state and shall issue the license if the Department determines that the requirements for licensure in such other state are equal to or greater than the requirements for licensure in Illinois. Each applicant for licensure pursuant to this Section shall submit an application accompanied by a nonrefundable fee of \$100.
- d) All licenses shall be renewed annually. All licenses shall expire on January 31 of each year, except licenses issued after October 31 and before February 1 shall expire on the next following January 31. The licensee shall be charged a non-refundable fee of \$15 for the issuance of a duplicate license.

- e) Renewal of license. Any license issued pursuant to these rules may be renewed if the licensee submits the application and a \$100 nonrefundable fee as required by subsection (a)(5) of this Section and has a certificate of completion of a Department-approved one day (8 hour) lead inspector or risk assessor refresher course. The refresher course content shall be the same as that indicated in subsection (f) of this Section for the inspector's license, or subsection (j) of this Section for the risk assessor's license. If a renewal application is received after January 1, the applicant shall pay a nonrefundable late fee of \$15 in addition to the renewal fee of \$100. An applicant whose licenses has been expired for a period less than 2 years may apply to the Department for reinstatement of his license. The Department shall issue such renewed license provided the applicant pays to the Department all lapsed license fees, plus a reinstatement fee of \$15. A license which has been expired for more than 2 years may be restored only by submitting a new application as specified in subsection (b) of this Section and successfully passing an approved lead inspection training course for a lead inspector's license and the additional risk assessor training course for a risk assessor's license.

- f) Approved Course Content. All lead inspectors and risk assessors shall have taken a qualifying training course which meets the requirements set out in this subsection and shall have received a certificate of completion. A training course in lead inspection shall:

- 1) Receive approval from the Department; and
- 2) Provide at least a three day course (equivalent to 24 hours of instruction) for individuals without experience as required in

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this Section, two days of which are dedicated to the topics specified in subsections (F)(2)(C), (E) and (F) of this Section:

- A) health effects of lead exposure;
- B) requirements of regulations and standards established by the Department;
- C) lead sampling techniques;
- D) chemistry related to the lead abatement industry;
- E) construction techniques;
- F) inspection and clearance sampling techniques; and
- G) safety.

- g) The Department shall issue a risk assessor's license to qualified applicants. In order to qualify, an applicant shall:

- 1) Comply with the requirements for the lead inspector's license specified in subsections (a)(1) through (5) of this Section. The Department may approve a third party examination (e.g., an examination required by federal law under 40 CFR 745) for any license required by Section 845.28 for lead abatement or mitigation services.

- 2) Prior to April 1, 1998, to qualify for a risk assessor license, a person shall:

Submit a certificate from an approved initial lead inspector training course and a certificate from an initial risk assessor training course or submit a certificate from an initial risk assessor training course and be a currently licensed lead inspector.

- 3) After March 31, 1998, to qualify for licensure as a Risk Assessor, a person shall submit a certificate from an approved initial risk assessor training course, be currently licensed as a lead inspector, and possess, at a minimum, one of the following combinations of education and experience:

- A) A bachelor's degree in science, engineering, or environmental health; or
- B) A bachelor's degree in any discipline and one year of experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction); or
- C) An associate's degree in any discipline and two years of experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction); or
- D) Be licensed as an industrial hygienist, professional engineer, architect or environmental health practitioner; or
- E) A high school diploma (or equivalent) and at least three years of experience in a related field (e.g., lead, asbestos, environmental remediation work, or construction).

- 2) Attend a two-day Department-approved risk-assessor training course that covers the curriculum specified in subsection (f) of this Section;

- 3) Possess at a minimum, one of the following combinations of education and experience:



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- A) A-bachelor's-degree-and-one-year-of-experience-in-a-related-field-(e-g--lead--asbestos--environmental-remediation-work-or-construction)--or
- B) An-Associate's-degree-and-2-years-of-experience-in-a-related-field-(e-g--lead--asbestos--environmental-remediation-work-or-construction)--or
- C) Certification--as--an--industrial--hygienist--professional-engineering/health/environmental--field--(e-g--safety professional--environmental-scientist--or
- B) A-high-school-diploma-(or-equivalent)--and--at--least--three-years--of--experience--in--a--related--field--(e-g--lead--asbestos--or--environmental-remediation-work)
- h) A training course in lead risk assessment shall receive approval from the Department when the following criteria have been met:
- 1) A training manager who is responsible for compliance with all requirements in this Section has been designated;
  - 2) A principal instructor has been designated;
  - 3) The responsibilities of the training manager and principal instructor are described;
  - 4) Documentation of the qualifications of the training manager and principal instructor is provided;
  - 5) Adequate facilities for classroom and field hands-on training are specified;
  - 6) A minimum of 16 hours, in not less than two days, with a minimum of 4 hours of hands-on instruction are provided;
  - 7) A final exam with criteria for pass/fail is administered;
  - 8) A model of the certificate of course completion with name/address/phone number of the training course provider and student information (name, social security number, dates of course, and indication of pass/fail) is submitted to the Department for each student after course completion;
  - 9) A qualify control plan to improve the course is provided;
  - 10) Copies of student and instructor manuals and course agenda are included;
  - 11) A class schedule is included;
  - 12) Assurance to the Department that a lead inspector training course certificate of completion is required of each applicant as a prerequisite for risk assessor training course attendance;
  - 13) The required application fee as specified in subsection (1) of this Section has been received by the Department.
- i) The curriculum for the risk assessor training course shall include the following:
- 1) Role and responsibilities of the risk assessor;
  - 2) Collection of background information to perform a risk assessment;
  - 3) Sources of environmental lead contamination (paint surface dust and soil, water, air, packaging, and food);

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- 4) Visual inspection procedures for the purpose of identifying potential sources of lead-based paint hazards;
  - 5) Lead hazard screening protocol;
  - 6) Sampling for sources of lead exposure;
  - 7) Interpretation of lead-based paint and other lead sampling results, including all applicable State and federal guidance pertaining to lead-based paint hazards (i.e., federal statutes and regulations);
  - 8) Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards; and
  - 9) Preparation of a final risk assessment report.
- j) A refresher training course in risk assessment shall receive approval from the Department when the following criteria have been met:
- 1) Cover the same topics as the full length course specified in subsection (i) of this Section, plus current safety practices, current laws and regulations, and current technologies;
  - 2) Be at least 8 hours long;
  - 3) Provide a hands-on assessment and a course test;
  - 4) Apply concurrently for approval with the initial lead inspector course; or
  - 5) Submit the information contained in subsection (h)(1) through (10) except (6) of this Section in a written application to the Department.
- k) Suspension, revocation, or denial of training courses. The Department may suspend, revoke or deny approval of any lead training course for the following reasons:
- 1) Misrepresentation of the contents of a training course to the Department and/or the student population;
  - 2) Failure to submit required information or notifications in a timely manner;
  - 3) Failure to maintain required records;
  - 4) Falsified records, instructor qualifications, or other related information or documentation;
  - 5) Failure to comply with the training standards and requirements in this Section;
  - 6) Failure to comply with federal, State, or local lead-based paint statutes or regulations.
- l) Application fees for approval and renewal of lead training courses:
- 1) All current Department approved lead training courses will expire on October 15, 1997.
  - 2) After October 15, 1997, all initial lead training course application fees will be \$200 per discipline and all lead refresher training course application fees will be \$100 per discipline.
  - 3) Approvals for lead training courses shall be issued for one year. Applications for renewal of all lead training courses must be received, with fees, by September 15 of each year. If the



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renewal application is received after September 15, a \$50 late fee shall be charged for each late training course application.

4) Application fees for all lead training courses, effective October 15, 1998, will be:

- A) Initial training course for all disciplines, \$500 per course.
- B) Refresher training course for all disciplines, \$250 per course.
- C) Late fees for all disciplines, \$50 per course.

m) Lead Worker and Contractor/Supervisor Licensing. A lead worker or lead contractor/supervisor shall be licensed by the Department prior to engaging in lead abatement or mitigation activities. Such licenses are nontransferable and shall be available at the lead abatement contractor's primary place of business for inspection by the Department or delegate agency.

n) The Department shall issue a Lead Worker License or Lead Contractor/Supervisor License to qualified applicants who comply with the requirements of subsections (a)(1), (3), and (5) of this Section. In addition, applicants shall attend a Department-approved course, in accordance with subsections (s)(2)(A) through (K) of this Section for lead workers and subsections (s)(2) and (3) of this Section for contractors/supervisors and shall pass the examinations administered at the conclusion of the course.

o) Application. Each person desiring licensure as a lead worker or lead contractor/supervisor shall make application to the Department on forms or in a format provided by the Department. Each application shall be accompanied by a nonrefundable fee of \$25 for a Lead Worker License or \$50 for a Lead Contractor/Supervisor License, and a certificate verifying completion of a Department-approved course, within one year prior to application, except as provided in this subsection. Employees of the Department, a delegate agency, or a local health department shall be exempt from licensure fees when such employee's license is used only for purposes related to employment at the above-mentioned agencies. A course taken after 1991 may qualify an applicant for licensure, provided the course is determined by the Department to be substantively equivalent to the requirements for approved course content specified in subsection (s) of this Section. Only Department-approved training courses will be accepted for application for licensure.

p) Reciprocity. Each applicant for licensure who is licensed or certified as a lead worker or lead contractor/supervisor in another state may request reciprocal licensure. The Department shall evaluate the requirements for licensure in such other state and shall issue the license if the Department determines that the requirements for licensure in such other state are equal to or greater than the requirements for licensure in Illinois. Each applicant for licensure pursuant to this subsection shall submit an application, on forms or in a format provided by the Department, accompanied by a nonrefundable

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fee of \$25 for a Lead Worker License and \$50 for a Lead Supervisor/Contractor License.

q) Renewal of License. All Lead Worker and Lead Contractor/Supervisor Licenses shall be renewed annually. All licenses shall expire on March 31 of each year, except licenses issued after December 31 and before April 1 shall expire on the next following March 31. Any current license issued pursuant to this Section may be renewed if the licensee submits, prior to March 1, a renewal application on forms or in a format provided by the Department; a nonrefundable fee of \$25 for a Lead Worker License or \$50 for a Lead Contractor/Supervisor License; and a certificate verifying completion, within one year prior to application for renewal, of a Department-approved one day (8 hour) lead worker or lead contractor/supervisor refresher course. The refresher course content shall be the same as that indicated in subsection (s)(2) of this Section for a Lead Worker License or subsections (s)(2) and (3) of this Section for a Lead Contractor/Supervisor License. If a renewal application is received after March 1, the applicant shall pay a nonrefundable late fee of \$15, in addition to the license renewal fee. An applicant whose license has been expired for a period of two years or less may apply to the Department for reinstatement of his license. The license shall be reinstated if the applicant submits to the Department a certificate verifying completion of the required type and number of refresher courses for the license category, all lapsed license fees, and a nonrefundable reinstatement fee of \$15. A license that has been expired for more than two years is not eligible for renewal. In such instances, the formerly licensed individual desiring to become licensed again shall follow the application procedures specified in subsection (n) of this Section.

r) Duplicate License. A duplicate license shall be issued to a currently licensed lead worker, contractor/supervisor, or contractor upon submittal of a \$15 nonrefundable duplicate license fee.

s) Approved Course Content. All lead workers or lead contractor/supervisors shall have taken a Department-approved training course which meets the requirements set out in this subsection and shall have received a certificate of completion upon passing the examination administered at the conclusion of the course. A training course for lead workers and lead contractor/supervisors shall:

- 1) Receive approval from the Department; and
- 2) Provide at least a minimum three-day course (equivalent to 24 hours) for the instruction of individuals who desire to be licensed as lead workers and a four-day course (equivalent to 32 hours) for individuals who desire to become licensed as lead contractor/supervisors. The three-day course shall be dedicated to the following topics:
  - A) History of Lead;
  - B) Health Effects of Lead Exposure;
  - C) Medical Surveillance of Lead Poisoned Individuals;

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- D) Legal Rights and Responsibilities;
- E) Personal Protective Equipment;
- F) Safety Problems;
- G) Abatement Methods and Work Problems;
- H) Decontamination;
- I) Clean-up and Disposal Procedures;
- J) Lead Monitoring and Tests; and
- K) Hazard Communication.
- 3) In addition to subsections (s)(2)(A) through (K) of this Section, a lead contractor/supervisor shall complete a lead contractor/supervisor supplemental course, which shall consist of an additional eight hours (one day) of training, and shall pass the examination administered at the conclusion of the course. The supplemental training course for lead contractor/supervisors shall be dedicated to the following topics:
- A) Lead Inspection;
  - B) Supervisory Techniques;
  - C) Occupational Safety and Health Administration (OSHA) Lead Standard 1910.1025 and 29 CFR 1926.62 (1993);
  - D) Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995).
- t) The Department shall prepare and maintain a list of licensed lead abatement contractors.
- 1) Requirements of License. An applicant for a lead abatement contractor license shall submit the following to the Department:
    - A) an application on a form or in a format provided by the Department;
    - B) a \$500 nonrefundable license fee or, for applications received on or after December 1, a \$250 nonrefundable license fee;
    - C) a certificate of financial responsibility documenting that the contractor carries liability insurance, self insurance, group insurance, group self insurance, a letter of credit, or a bond in the amount of at least \$250,000 for work performed pursuant to the Lead Poisoning Prevention Act and Lead Poisoning Prevention Code. The contractor shall notify the Department of any changes in the status of the certificate of financial responsibility, including expiration, renewal or alteration of the terms of the certificate. The certificate of financial responsibility shall be an original and shall expressly provide coverage for lead abatement. A photocopy or facsimile copy is not acceptable. The certificate shall be issued by an insurance company that is authorized to transact business in Illinois. A current certificate of insurance shall be on file with the Department at all times;
    - D) a copy of a valid Contractor/Supervisor's License issued to

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- either the contractor or the contractor/supervisor employed by the contractor;
- E) a written statement signed by the contractor specifying that only lead workers licensed by the Department will be employed for lead abatement;
  - F) a copy of the contractor's written standard operating procedures and employee protection plan, which shall include specific references to medical monitoring and respirator training programs required in OSHA regulations at 29 CFR 1910.1001 and 29 CFR 1926.62 (1993);
  - G) a description of all legal proceedings, lawsuits or claims which have been filed or levied against the contractor or any of his past or present employees or companies in regard to construction related activities.
- 2) Reciprocity. An applicant for a contractor's license who is licensed or certified for lead contracting in another state may request reciprocal licensure. The Department shall evaluate the requirements for licensure in such other state and shall issue the license, if the Department determines that the requirements for licensure in such other state are equal to the requirements for licensure in this State. Each applicant for licensure pursuant to this subsection shall submit a one time application fee of \$250 nonrefundable and an additional \$500 nonrefundable license fee if qualified for licensure.
- 3) Renewal of License. All contractor licenses shall be renewed annually. All licenses shall expire on May 31 of each year. If a renewal application is received after April 30, the applicant shall pay a nonrefundable late fee of \$100, in addition to the \$500 nonrefundable renewal fee. An applicant whose license has expired for a period of three years or less may apply to the Department for reinstatement of the license. The license shall be reinstated if the applicant submits to the Department all lapsed license fees and a reinstatement fee of \$100. A license which has expired for more than three years is not eligible for renewal. In such instances, the formerly licensed individual desiring to be licensed shall follow the application procedures specified in subsection (t)(1) of this Section.
- u) Denial of application, and suspension or revocation of license:
- 1) The Director, after notice and opportunity for hearing, may deny the application for, or suspend or revoke the license of, a lead abatement contractor, contractor/supervisor, worker, lead assessor, or inspector in any case in which the Director finds substantial or continued failure to comply with this Part.
  - 2) Such notice shall be made by certified mail or by personal service and shall set forth the particular reasons for the proposed action and provide the applicant or licensee with an opportunity to request a hearing. If a written hearing request is not received within 15 days after receipt of the notice by the

## DEPARTMENT OF PUBLIC HEALTH

NOTICE OF MODIFICATION TO EMERGENCY RULES IN RESPONSE TO AN  
OBJECTION OF THE JOINT COMMITTEE ON ADMINISTRATIVE RULES

applicant or licensee, the right to a hearing is waived.

(Source: Emergency amendment at 21 Ill. Reg. 14680, effective October 31,  
1997, for a maximum of 150 days)

JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLY  
SECOND NOTICES RECEIVED

The following second notices were received by the Joint Committee on Administrative Rules during the period of March 17, 1998 through March 23, 1998 and have been scheduled for review by the Committee at its April 21, 1998 meeting in Springfield. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rule should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

Second  
Notice  
ExpiresAgency and RuleStart  
of First  
NoticeJCAR  
Meeting

5/1/98

Department of Insurance, Payment of  
Annual Compliance Fees for Pension  
Funds (50 Ill Adm Code 4415)1/30/98  
22 Ill Reg  
2487

4/21/98

5/1/98

Department of Agriculture, Payment of  
Eligible Claims of Soil and Water  
Conservation District Employees Unpaid  
by Mid-Continent Medical Benefit Trust  
(8 Ill Adm Code 755)1/23/98  
22 Ill Reg  
2005

4/21/98



Rules acted upon during the quarter of January 1 through March 31, 1998 (Issues 1-13) are listed in the Issues Index by Title number, Part number and Issue number. For example, 50 III. Adm. Code 4401 published in Issue 40 will be listed as 50-4401-40. The letter "R" designates a rule that is being repealed. Inquiries about the Issues Index may be directed to the Administrative Code Division at 217-782-4414 or [jnatale@ccgate.sos.state.il.us](mailto:jnatale@ccgate.sos.state.il.us) (Internet address).

#### PROPOSED

1-100-12	23-2790-6	62-1816-12	77-870-5
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2-651-2	32-331-3	62-1823-12	83-416-4
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11-204-11	32-422-7	62-1840-12	83-650-1
11-502-8	32-610R-3	62-1847-12	86-100-1
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